

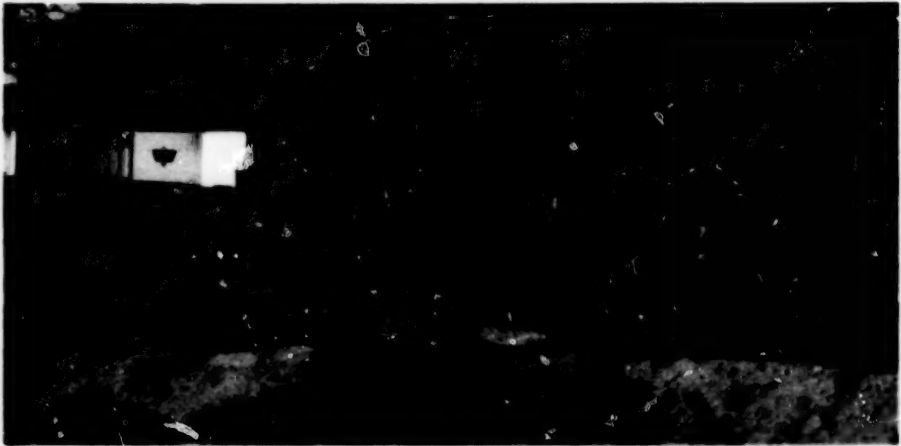
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Interstate Commerce Commission
1987 Annual Report



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Interstate Commerce Commission 1987 Annual Report



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LETTER OF TRANSMITTAL

To the Congress of the United States

Washington, D.C. April 4, 1988

It is my pleasure to submit the one hundred and first Annual Report of the Interstate Commerce Commission, in accordance with the Interstate Commerce Act.

The report generally embraces the fiscal year ended September 30, 1987, except in the discussion of significant actions that transcend the 12-month period, or where necessary to conform to various statistical analyses.

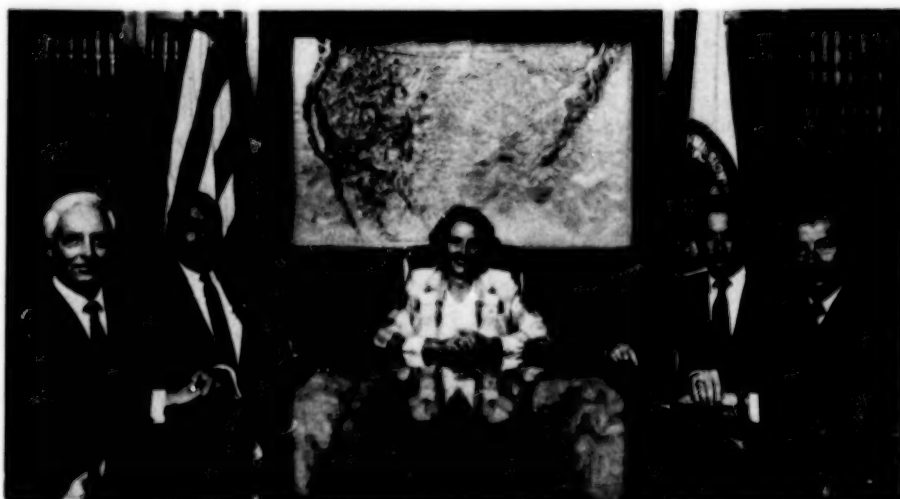
The statement of appropriations and aggregate expenditures for the 1987 fiscal year appears in Appendix D.

Heather J. Gradison
Chairman

THE COMMISSION

(As of September 30, 1987)

	Appointed	Term Expires Dec. 31
Heather J. Gradison, <i>Chairman</i> (R) Ohio	1982	1988
Paul H. Lamboley, <i>Vice Chairman</i> (D) Nevada	1984	1989
Malcolm M.B. Sterrett (R) Maryland	1982	1987
Frederic N. Andre (R) Indiana	1982	1987
J.J. Simmons III, (D) Oklahoma	1984	1990



The Commissioners. From the left, Commissioner Frederic N. Andre, Commissioner J.J. Simmons III, Chairman Heather J. Gradison, Commissioner Malcolm M.B. Sterrett, and Vice Chairman Paul H. Lamboley.



Functions and Responsibility

The Interstate Commerce Commission is an independent federal Commission responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the Commission attempts to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of shippers, receivers, and consumers.

The ICC today maintains jurisdiction over some 43,468 for-hire companies providing surface transportation in the U.S. These companies include railroads, trucking firms, bus lines, water carriers, one coal slurry pipeline, household goods transporters, and freight forwarders.

The Interstate Commerce Commissioners are appointed by the President and confirmed by the Senate. The ICC is authorized to have 5 Commissioners, each with a five-year term of office.

How the ICC Operates

The Commissioners supervise all of the ICC's activities, and delegate specific authorities to the Commission's 12 bureaus and offices.

As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental agencies. In addition, the Chairman is generally responsible for:

1. Overall Commission management and operations;
2. Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
3. Identification and resolution of major regulatory problems; and
4. Development and utilization of effective, expert staff support for

the fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission and assumes the Chairman's duties during the Chairman's absence or illness. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, or discipline of Interstate Commerce Commission practitioners.

During fiscal year 1987, the Commission's activities were carried out through an organizational structure consisting of the Commission's bureaus and offices as follows:

- Office of Public Assistance (Special Counsel)—functions as a clearing house for resolution of small-business problems relative to surface transportation regulation and advises the Commission on the nature and status of such problems, contributes to the public-interest record in Commission proceedings and assists individuals, consumer groups, small communities, small shippers, and public utility commission officials participating in those proceedings.
- Office of Government and Public Affairs—analyzes legislative proposals; assists in the development of the Commission's own legislative proposals; aids Congress in drafting of legislation; assists in the preparation of testimony to be presented before Congressional committees; assists Members of Congress and other representatives of the 50 states with matters pertaining to the work of the Commission; furnishes information to the general public and the media concerning ICC decisions and activities; conducts briefings for the media and U.S. and foreign visi-



tors; and prepares the ICC's Annual Report to Congress.

- Office of Human Relations—manages the Commission's program to provide equal employment opportunity for all employees and applicants, and provides training in the area of human relations.
- Office of the Managing Director—manages the Commission's day-to-day operations.
- Office of the Secretary—serves as the Commission's documentation center and is responsible for the issuance of the Commission's decisions and other legal documents.
- Office of the General Counsel—renders legal opinions to the Commission, and defends Commission decisions challenged in court.
- Office of Hearings—staffed by Administrative Law Judges, this office conducts various hearings for the Commission.
- Office of Transportation Analysis—conducts economic and statistical analyses of the transportation industry and provides economic advice to the Commission upon need or request.

- Office of Proceedings—processes formal ICC cases pertaining to operating rights, financial matters, rates, and competitive practices.
- Office of Compliance and Consumer Assistance—monitors the activities of railroads, trucking companies, barge lines, freight forwarders, and rate bureaus to ensure compliance with ICC policies, and assists the public in the resolution of complaints against ICC-regulated companies.
- Bureau of Accounts—prescribes uniform accounting and reporting rules, reviews various financial reports, analyzes cost and financial evidence submitted by parties to proceedings before the Commission, compiles and publishes transportation statistics and cost studies, and conducts audits of pertinent records of transportation firms.
- Bureau of Traffic—monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tariffs before they may become effective.

YEAR IN REVIEW



During the course of fiscal year 1987, the Commission decided 14 major proceedings and approved its proposed budget for fiscal year 1989 in a total of 12 conferences that were open to the public. The Commission held its first open conference in the past fiscal year on October 7, 1986, to consider changes to the Commission's railroad transportation contract rules and standards for railroad revenue adequacy. On October 8, the Commission for the first time explicitly authorized the filing of tariff matter in electronic form. Although this action was for the limited purpose of providing highway distance data, it was a significant step toward full use of tariffs through modern technology.

In an open voting conference held on October 9, the Commission, on administrative appeal from a prior decision, again denied the request of the Midtec Paper Corporation to allow the Soo Line Railroad Company (Soo Line) to use the Chicago & Northwestern Transportation Company's terminal facilities, and to require a reciprocal switching agreement which would have allowed the Soo Line to serve Midtec's Wisconsin milling facility. This was the first application of the Commission's competitive access guidelines. On October 10, 1986, the Commission served a written decision detailing the basis for its July 1986 vote to deny the proposed merger of the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Transportation Company.

In another decision made available to the public on October 17, the Commission provided that future maximum Rail Cost Adjustment Factor (RCAF) rate levels would rise and fall with the level of the quarterly RCAF as soon as a bank of credits was exhausted. The Commission established the bank of credits to account for overstatements accruing prior to November

1986. The Commission also ordered the RCAF rate levels rolled back to the level in effect in December 1985.

Also in October, the Commission adopted a negotiated rates policy statement holding that the ICC has statutory jurisdiction to find that in particular instances—specifically when a negotiated, but unpublished, motor carrier rate existed upon which a shipper reasonably relied—collection of undercharges based on a published tariff rate would constitute an unreasonable practice. In accordance with this policy statement, the Commission considered a significant number of court referral proceedings on the question of the reasonableness of undercharge claims.

In the legislative area, the Congress's October 1986 enactment of new legislation that substantially deregulated the nonhousehold goods segment of the freight forwarding industry enabled the Commission to move quickly to revise its regulations governing freight forwarder operations by generally restricting their applicability to household goods forwarders.

On November 2, the Commission heard its first oral argument of the past fiscal year by a rail shipper organization requesting a uniform nationwide prescription for private covered hopper cars, and on November 11 the Commission held a second open conference on transportation contracts. On November 14, the Union Pacific Railroad filed an application with the Commission to acquire the Missouri-Kansas-Texas Railroad Company and, effective November 17, the rail cost adjustment factor for common carrier rates was rolled back by the Commission to the level of December 31, 1985.

On November 20, the Commission served its decision in the first railroad coal rate case applying the ICC's constrained market pricing guidelines, and it ordered reparations and interest of



\$23 million dollars. Following a court remand, the Commission reissued, on November 21, its class exemption for the abandonment of railroad lines that have been out of service for at least two years.

On December 11, 1986, the Commission submitted to Congress a report addressing the extent to which any cost savings resulting from customer pickup of food and grocery products under Section 8 of the Motor Carrier Act (Act) have been passed on to consumers. The report found that (1) while customer pickup activity and the resultant savings had grown substantially in the early 1980's, in recent years it has stabilized and become an accepted business practice; (2) as a result of continuing strong competition in the grocery industry at the retail level, there was no indication of any failure of these savings being passed on to consumers as required by the Act; and (3) early difficulties appear to have been resolved and there was no evidence found of significant discrimination or abuses of Section 8.

On December 16, the Commission voted in an open conference to allow one day's notice for independently filed new or reduced rail rates, and on this same date the Commission issued a decision accepting for consideration the Union Pacific Railroad's November application to acquire the Missouri-Kansas-Texas Railroad Company. The Commission issued a notice proposing new rules for transportation contracts and adopted them as interim rules on December 19. These rules required expanded disclosure of information concerning rail contracts, including informal procedures for affected shippers to obtain contract disclosure, and a proposal for increased availability of discovery for contract terms through formal requests to the Commission.

On December 24, the Commission issued a report—one of several released during the past fiscal year that studied complex and unique environmental issues—examining the disposition of historical resources involved in a proposed 200-mile Missouri-Kansas-Texas Railroad abandonment in Missouri.

On December 31, the Commission made available to the public a decision requiring the Consolidated Rail Corporation (Conrail) to maintain common carrier rates for the transportation of hazardous chemicals, as well as a decision making several changes in the manner in which the railroad rate of return on investment is computed for the Commission's annual revenue adequacy determinations.

Also in December 1986, the Commission's Office of Public Assistance produced an updated version of its publication, "Public Participation In Rail Abandonment Cases Under The Interstate Commerce Act", to reflect new regulations and case law. This publication covers all phases of rail abandonments and is intended to help state and local governments, shippers, community groups, and individuals gain a general understanding of the Commission's rail abandonment procedures.

On January 23, 1987, the Commission adopted final revised rules governing the computation of avoidable costs and return on investment in rail abandonment and subsidy determinations. Shortly afterwards, on January 28, the Commission served a decision allowing rail carriers to depart from decades-old class rate prescriptions and requesting a plan from carriers for vacating the prescriptions.

On February 6, the Commission decided to consider a proposal which would require Class I railroads to have an independent public accountant review each road and equipment depre-



ciation study prepared by the railroads, and to prepare and submit to the Commission a report addressing whether a railroad's study is in conformance with the Commission's regulations and instructions. On February 11, the Commission held that the proposed merger between CSX Transportation, Inc. (CSX) and Sea-Land's ocean operations did not require Commission approval, and it consequently dismissed the firms' merger application. However, the Commission postponed its decision on a CSX application to control Sea-Land's two motor carriers so that it could consider the impact of recent legislation concerning the acquisition of motor carriers by railroads.

The Contract Rate Advisory Service of the Commission's Office of Transportation Analysis submitted a report to Congress on February 18 dealing with the competitive impact of railroad rate contracts on grain shippers. The report's findings were based on responses representing over 230 small and medium shippers; 29 large grain shippers; various shipper associations, government agencies, and railroads; and individual state consultant reports for 12 major grain producing states. Major findings were that (1) many small grain shippers were disadvantaged by contracts but would be similarly disadvantaged under a straight tariff-rate structure providing lower rates for multi-car unit train shipments; (2) most large shippers believed that contracts had a positive impact on their positions in domestic and export markets; and (3) on balance, farmers realized increased prices because of contracts.

In an open voting conference held on February 24, the Commission denied the November 1986 request of a rail shipper organization for the uniform, nationwide prescription of allowances for private, covered, railroad hopper cars.

On March 6, the Commission issued an Environmental Impact Statement in the former Baltimore and Ohio Railroad Company's abandonment of its Georgetown, Washington, D.C., Branch, the result of 18 months of environmental review and investigation. In a March 7 open voting conference, the Commission voted to approve the application of the Star Lake Railroad Company to construct a new rail line in New Mexico. On March 11, the Commission proposed rules to apply statutory financial assistance procedures to abandonment and discontinuance-of-service exemption proceedings, and on March 12 it issued a decision requiring that railroads be paid for providing transportation service in the handling of empty rail cars moving to repair facilities. On March 19, the Commission affirmed its standards against discriminatory rates on recyclables and ordered refunds for instances of past discrimination. Throughout the month, the Commission implemented provisions of Section 504 of the Rehabilitation Act, and public announcements were prepared by the ICC's Office of Human Relations which notified the public of the Act's provisions and the Commission's compliance with them.

On April 4, 1987, the Commission served a decision setting standards for the review of conclusions reached by arbitrators in resolving disputes between railroad employees and carriers. The decision addressed the relationship between ICC-imposed labor protection conditions and implementation of those conditions by arbitrators.

On April 8, the Commission issued a notice seeking comments on two simplified methods for determining maximum rate reasonableness involving captive noncoal and small coal traffic. Also, as part of its continuing administration of the Commission's railroad Waybill Sample Program, the



ICC's Office of Transportation Analysis issued new rules on April 16 for the release of confidential Waybill data.

On April 24, 1987, the Commission proposed to exercise its statutory discretion to exempt several types of water carrier service and to restore a small-craft exemption that had been removed previously. The Commission proposed to expand the territorial scope of commercial zones and terminal areas and sought public comment on various methods for accomplishing this expansion in a notice issued on April 26, and on April 27 the Commission served final rules for shippers requesting cost information in connection with protests to cancellations of joint rates under 49 U.S.C. 10705a.

Also in April, new legislation became effective that clarified the extent of the Commission's pre-emptive jurisdiction in intrastate passenger carrier licensing and changed the entry policies for motor passenger carriers receiving financial assistance. In response, the Commission issued notifications to affected parties and is considering rules revisions to include in its licensing procedures additional considerations prescribed by the revised statute.

The Canadian National Railway (CNR) and Guilford Transportation Industries, Inc. (Guilford) presented oral argument to the Commission on May 5, 1987, regarding Guilford's control of the Boston and Maine Corporation (Boston & Maine) and the Delaware and Hudson Railway Company and the court-remanded issue of protective conditions for the CNR. On May 7, the Commission issued a decision exempting the rail movement of new intermodal trailers and containers. In a decision served May 13, the Commission used its new coal rate guidelines to prescribe maximum reasonable rate levels in a complaint proceeding initiated by the Arkansas Power and Light

Company and, in another oral argument held on May 14, the Commission reviewed various developments that had taken place to date in the Santa Fe/Southern Pacific merger proceeding.

On May 18, the Commission instituted an investigation into the labor implications of Guilford's transfer of its rail operations to its Springfield Terminal subsidiary, and on May 23 the Commission applied its proposed guidelines for rate reasonableness in non-coal cases for the first time by use of the "revenue/cost ratio" methodology, one of two proposed tests of rate reasonableness.

At the request of the state of Indiana, the Commission revoked Indiana's authority to regulate intrastate rail traffic and assumed jurisdiction in a decision served May 21. This action brought to 17 the number of States in which the Commission now directly regulates intrastate rail traffic.

Also in May, as it had done during the month of April, the Commission conducted employee training on the ICC's policy prohibiting sexual harassment in the workplace. Through its office of Human Relations, the ICC additionally conducted training in May for certain personnel in the use of a telecommunications device for the hearing impaired.

In a decision served on June 2, the Commission proposed to exempt from regulation new rail construction, and on June 8 the Supreme Court vacated a Court of Appeals decision to remand to the Commission a labor issue regarding the crewing of trains operating over trackage rights that were imposed in an ICC decision approving the Union Pacific Railroad's control of Missouri Pacific Railroad and the Western Pacific Railroad.

On June 24, the Commission decided to propose the adoption of revised rules which would eliminate the



need for the filing of letters of intent for special docket adjustments involving amounts of \$25,000 or less. The Commission's special docket process allows rail and water carriers to refund or waive the collection of admittedly unreasonable charges. The Commission's proposal was unopposed, and that revision has benefited both carriers and the Commission by reducing paperwork and by improving efficiency in the processing of special docket adjustments. In an open voting conference held on June 30, the Commission denied the requested reopening of the Santa Fe/Southern Pacific merger proceeding and required the Santa Fe Southern Pacific Corporation to divest itself of at least one of its member carriers.

Because of the presence of historic resources in a proposed Boston and Maine railroad abandonment in Connecticut, the Commission also served a report in June which documented these resources and examined the potential impacts of the proposed abandonment. Also during the month of June, the Commission's Office of Human Relations presented training seminars to regional employees on the provisions of the Age Discrimination in Employment Act and sections of the Rehabilitation Act.

By a decision served on July 7, the Commission exempted from regulation all U.S. Department of Defense rail transportation contracts except those involving agricultural commodities. The Commission issued its second decision applying its non-coal rate reasonableness standards on July 10, and in that decision the Commission applied the "formula replacement cost" methodology for the first time. On July 22, motor carriers conducting certain trailer- and container-on-flatcar operations as agents of railroads were exempted from regulation. On July 31, the Commission's Office of Human Re-

lations conducted training led by U.S. Department of Justice representatives which focused on the legal and practical aspects of Section 504 of the Rehabilitation Act. Also in July, the Commission's Office of Transportation Analysis furnished the U.S. Department of Transportation (DOT) with actual annual railroad abandonment data for the past three years, and for potential future abandonments, for use in the DOT's State Assistance Funding Program.

It was also during July that the Commission began its review of an application proposing the integration of the nation's two largest motor passenger carriers. GLI Acquisition Company (GLI) (a subsidiary of the controlling interests of the Greyhound Lines bus system) is seeking to purchase the operating rights and some operating assets of Trailways Lines, Inc. (the dominant member of the National Trailways Bus System). Pending final disposition of the GLI application, the Commission granted an application for temporary authority providing for the lease of the interstate and intrastate operating rights and other assets of Trailways by GLI.

On August 4, the Commission issued its printed decision denying the reopening of the proposed Santa Fe/Southern Pacific merger and set forth procedures for the filing of a plan of divestiture. In a decision served August 7, the Commission discontinued its second annual oversight hearing concerning CSX's acquisition of American Commercial Lines because it found that competition had not been reduced by the acquisition, and because American Commercial Lines was financially healthy.

On August 18, the Commission's Office of Transportation Analysis made available its 1986 ICC Waybill Sample, a sampling of all carload waybills for rail traffic terminating in the United



States during calendar year 1986. This waybill sample, as well as those developed in prior years, are the only statistically valid sources of data for industrywide rail movements. Also developed was a newly expanded Public Use File containing nonconfidential data on 1986 rail traffic flows and patterns.

The Office of Transportation Analysis additionally issued in August a study providing information and data on changes in the structure and performance of the motor carrier industry since passage of the Motor Carrier Act. This report, the result of an ongoing Commission activity, focused on the impact of reduced economic regulation and more intense competition made possible by the Act. Also during August, the Commission's Office of Public Assistance published and disseminated the fourth edition of "So You Want to Start A Small Railroad". This booklet, which provides information on Commission procedures for obtaining approval to operate a railroad, was revised to include the latest changes in the Commission's railroad exemption procedures and other means of acquiring rail authority.

On September 10, the Commission stayed and sought comment on the exemption of the Wisconsin Central Ltd.'s acquisition of almost 2000 miles of Soo Line Railroad Company track. At an open voting conference held on September 15, the Commission approved the Union Pacific Railroad Corporation's control of Overnite Transportation Company, the nation's seventh largest motor carrier.

In September 1987, as part of an ongoing revision and simplification of the Code of Federal Regulations, the Commission also adopted revised application rules, at 49 CFR Part 1160, providing for consolidated procedures to govern both motor carrier licensing applications and requests for restric-

tion removal. Other revisions to the Code of Federal Regulations implemented during the past fiscal year to clarify and streamline regulations include: (1) elimination of the remittance, notification, and recordkeeping portions of collect-on-delivery (C.O.D.) shipment rules; (2) amendment of tariff publication rules to reduce the notification period for independently filed, single-factor domestic, motor-water property rates, and to exempt water contract carriers from all tariff-filing requirements; and (3) elimination of various unnecessary regulations, such as those governing embargoes, motor carrier operations in Hawaii, and procedures for obtaining passenger carrier superhighway and deviation operating authority; and (4) various amendments to the Commission's licensing regulations.

During fiscal year 1987, the Commission's Office of Transportation Analysis (OTA) continued to maintain a computerized data base of railroad contract rate summaries. In addition to entering over 17,000 new contract filings, OTA revised the information it had collected to include shipper names on agricultural commodities as required by the Commission's January 27, 1987, contract rules revision. The OTA also utilized this data base to respond to numerous Commission and public requests for information. As of September 30, there were over 61,000 contracts filed with the Commission since passage of the Staggers Rail Act of 1980.

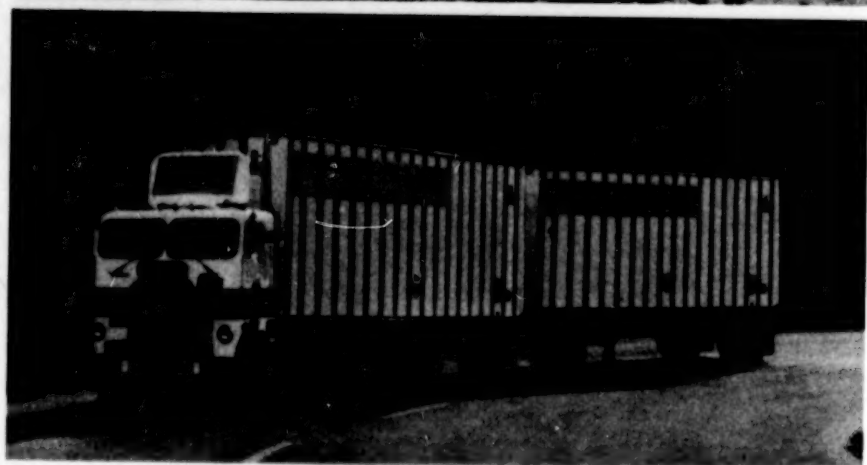
The past fiscal year also saw the Commission continue its in-depth study of those short line railroads that have commenced operations since the Staggers Act. Because of the significant growth in the number of short lines and their increasingly important role in transportation, the Commission has actively surveyed these carriers to develop a comprehensive and current

data base. In September, the Commission finalized a periodic report on new short lines and regional railroads which summarized the data it had collected during the preceding 12 months. In September 1987, these carriers were resurveyed to obtain additional and updated information for inclusion in the Commission's next periodic report. The Commission additionally prepared related testimony for several Congressional hearings on short line railroads.

The Commission's Office of Public

Assistance responded to over 14,000 inquiries during fiscal year 1987 regarding motor and rail operating authority and deregulation, and it also provided advice and assistance to numerous parties involved in rail abandonment cases and other transportation matters. The Office of Transportation Analysis also continued a monitoring study to assess the effects on shippers and carriers of exempting rail boxcar traffic, and a draft report of that study is expected to be completed early in fiscal year 1988.

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LEGISLATION

Several bills affecting the Commission were enacted by Congress during fiscal year 1987. Some were passed in October 1986, before the 99th Congress adjourned, while others were passed in the 100th Congress.

Public Laws

ICC Centennial. To recognize the 100th anniversary of the establishment of the Interstate Commerce Commission, a resolution, S.J. 96, designating April 3, 1987, as "Interstate Commerce Commission Day" was passed by Congress and signed by the President on April 3.¹

Bus Regulatory Reform Act Amendments. Two amendments to the Bus Regulatory Reform Act were included in H.R. 2, the Surface Transportation and Uniform Relocation Assistance Act of 1987, which became law on April 2, 1987.² Section 339, "Bus Carrier Certificates for Recipients of Governmental Assistance" and Section 340, "Utilization Requirements for Certificates Authorizing Intrastate Bus Operations" are the same as provisions contained in the highway funding legislation, H.R. 3129, in the 99th Congress.

Conrail Sale. The Omnibus Budget Reconciliation Act of 1986,³ which became law on October 21, 1986, contained the Conrail Privatization Act, the legislation enabling the sale of the Consolidated Rail Corporation through a public stock offering. During House subcommittee and committee consideration, attempts were made to include revisions to the Staggers Rail Act of 1980. In the conference committee, labor-protection provisions were deleted while two railroad reform provisions were approved. One required more disclosure of the terms of contracts for the transportation of agricultural commodities, as well as a Com-

mission report to Congress not later than 120 days after enactment. The report required an assessment of the impact of competition among agricultural shippers, specifically the different impacts of contract rates and published single-car rates. The other provision confirmed the Commission's legal authority to adopt rules on small railroad boxcar protections.⁴ The issues of revising the Staggers Rail Act and labor protection were set aside with the promise that they would be considered in the 100th Congress.

Freight Forwarder Deregulation

The Surface Freight Forwarder Deregulation Act of 1986, which became law on October 22, 1986,⁵ removed the Commission's jurisdiction over most activities of the surface freight forwarding industry, excluding household goods freight forwarders which continue to be regulated. Existing regulatory provisions retained for all freight forwarders concern limitations on court actions dealing with overcharges; the Carmack Amendment, involving cargo liability and claims settlement procedures; cargo insurance filing requirements; and the establishment of rates limiting liability to values determined by written declaration between carriers and shippers.

Acquisition of Motor Carriers by Railroads

Section 3403, the Savings Provision of the Anti-Drug Abuse Act of 1986,⁶ which became law on October 27, 1986, affects the Commission's responsibilities by requiring the Commission and courts reviewing Commission actions to follow the standards established by the ICC in an acquisition proceeding.⁷ The Savings Provision

⁴Ex Parte No. 346 (Sub-No. 19), *Boxcar Hire and Car Service*, 3 I.C.C. 2d 1 (1986).

⁵P.L. 99-521.

⁶P.L. 99-570.

⁷Ex Parte No. 438, *Acquisition of Motor Carriers by Railroads*, 1 I.C.C. 2d 718 (1984).

¹P.L. No. 100-19.

²P.L. No. 100-17.

³P.L. No. 99-509.



applies to cases where a railroad filed an application to purchase a motor carrier between the dates of July 20, 1984, and September 30, 1986, and the practical effect was to allow three pending mergers to take place.⁸ The U.S. Court of Appeals for the District of Columbia Circuit had previously decided that the Commission's reinterpretation of statutory requirements for rail acquisitions of motor carriers in an acquisition proceeding was contrary to Congressional intent. (See footnote 7.)

ICC Sunset Proposal

Early in the 100th Congress, the Administration submitted omnibus trade legislation which became H.R. 1155 and S. 539, the Trade, Employment, and Productivity Act of 1987. Contained in this legislation is the "Interstate Commerce Sunset Act of 1987," described as a continuing effort to reduce unnecessary and burdensome government regulations. The Act provides for the termination of much of the Commission's regulatory authority, especially in the motor carrier area, and the transfer of most residual authority to the U.S. Department of Transportation. Trade provisions were separated from many extraneous items in the original bills and were actively considered by Congress. The ICC sunset proposal was one of those not acted upon in either the House or Senate. The Commission did not testify on the proposal.

Congressional Hearings

During the past fiscal year, the Commission testified four times before Congressional committees on railroad issues, once on motor issues, and twice on its annual budget appropria-

tion for fiscal year 1988. In addition, the Commission submitted written analyses of major railroad reregulation legislation (S. 676). Each is described in more detail below.

Revisions to Staggers Rail Act. The Commission testified on May 28, 1987, before the Subcommittee on Transportation, Tourism, and Hazardous Materials of the House Committee on Energy and Commerce and on June 17, 1987, before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, Science, and Transportation. The subject of both hearings was the Staggers Act. The Commission's testimony was substantially the same for both hearings, and contained many statistics showing the effect of the Staggers Act on industry performance. It also explained the recent administrative implementation developments that occurred in 1986 and 1987. The principal points in the testimony were that the Staggers Act is working well for nearly all concerned, and that the Commission is actively working to maintain a balanced set of regulatory policies that will provide carrier flexibility and protect shippers presently without transportation alternatives.

The Commission also prepared a written analysis of S. 676, the Consumer Rail Equity Act. This Act is identical to the House bill, H.R. 1393. This section-by-section analysis is dated June 17, 1987.

Clayton Act Amendments. The Commission testified on May 13, 1987, before the Subcommittee on Antitrust of the Senate Judiciary Committee and on June 4, 1987, before the Monopolies and Commercial Law Subcommittee on the House Judiciary Committee. The hearings were on S. 443 and H.R. 941, the "Clayton Act Amendments of 1987," legislation proposing to eliminate the "Keogh" doctrine and the prohibition against injunctive relief in

⁸ Finance Docket No. 30500, *Norfolk Southern Corp.—Control—North American Van Lines*, 11 C.C. 2d 842 (1985); Finance Docket No. 31000, *Union Pacific Corp. and BNSF Corp.—Control—Overnight Transportation Corporations*; Docket MC-F-17934, *Norfolk Southern Corporation and North American Van Lines, Inc.—Control—Exemption—Trans-Star, Inc.*



the Clayton Act, so far as these rules concern rail carriers. The Commission's testimony was substantially the same for both hearings.

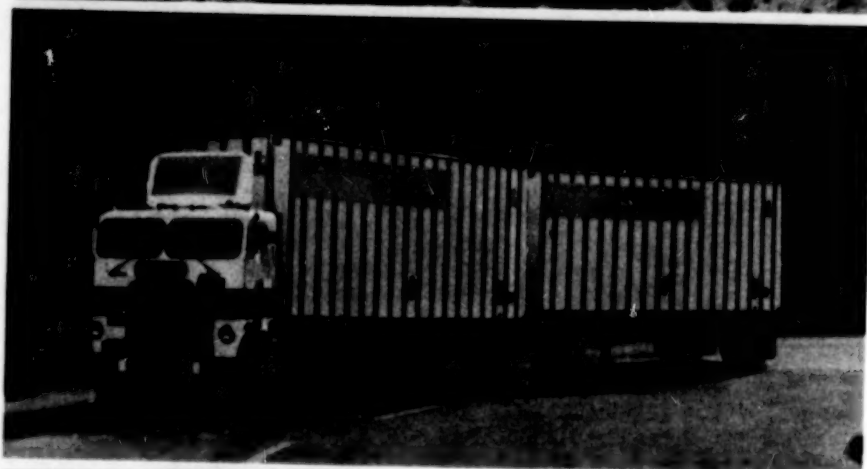
The Commission testified that the current bills differ substantially from those in the 99th Congress, and are better bills. The first provision in the Clayton Act Amendment bill would amend Section 4 of the Clayton Act, in effect eliminating the Keogh doctrine. The Commission had supported the elimination of the Keogh doctrine in earlier court proceedings, and continues to believe that its application in antitrust suits is unnecessary and harmful. The second provision of the proposed amendment would change Section 16 of the Clayton Act to eliminate its application to rail carriers, thus essentially providing for greater availability of injunctive relief in antitrust suits. The Commission testified that repeal of Section 16 is consistent with the elimination of the Keogh doctrine, but it does require careful analysis. The Commission's concern with this provision is that overlapping regulations not be created. It testified that if repeal of Section 16 were meant to intermix antitrust regulation with the rules and policies under the Interstate Commerce Act, the Commission would be opposed to its enactment. The Commission asked for an opportunity to contribute to the drafting of clarifying language on this provision.

Mexican Trucking. On March 26, 1987, the Commission testified before the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation. The

subject of the hearing was Mexican trucking issues, particularly regulation of transportation within border commercial zones. The Commission's testimony discussed its implementation of the certificate of registration requirements contained in Section 226 of the Motor Carrier Safety Act of 1984 and of ICC programs for training U.S. Customs personnel to enforce those provisions. It also discussed a Commission decision to establish a commercial zone encompassing the four Texas counties on the U.S.-Mexican border.⁹ Finally, the testimony discussed consideration of safety issues involved in the Commission's commercial zone decision.

1988 Budget Appropriations. The Commission testified on February 25, 1987, before the Subcommittee on Transportation and Related Agencies of the House Committee on Appropriations, and on April 9, 1987, before the Subcommittee on Transportation and Related Agencies of the Senate Committee on Appropriations. The purpose of the hearings was to review the Commission's fiscal year 1988 budget request. The Commission's testimony was substantially the same for both hearings. The 1988 budget request was for an appropriation of \$47.979 million and 748 staff years, or 58 staff years fewer than were expended in fiscal year 1986. This request was contingent upon the Congress not enacting an Administration proposal to sunset the Commission by October 1, 1987.

⁹ Ex Parte No. MC-37 (Sub-No. 38), *Petition to Establish a Commercial Zone of Cameron, Hidalgo, Starr, and Willacy Counties, TX*, 133 M.C.C. 530 (1985).



ADMINISTRATION

Organization and Management

In fiscal year 1987, there were neither changes in the Commission's organizational structure nor management as the Commission continued to make efficient use of resources in light of its changing regulatory role. The Commission's average staff-year employment level stood at 732 for the past fiscal year, a reduction of 76 from the prior fiscal year's average of 806.

Human Relations

During fiscal year 1987, the Office of Human Relations focused its attention on the areas of equal employment opportunity and human resources management. The Commission established a model for other federal agencies in its implementation of the requirements of Section 504 of the Rehabilitation Act, as amended, by (1) issuing a press release notifying the public of the Act's provisions; (2) requesting transportation industry journals to publish public-service notices of the Commission's compliance with the Act; (3) developing and distributing a display poster announcing a Commission rulemaking in this regard; (4) ensuring the usability and accessibility of the Commission's structural facilities; and (5) evaluating Commission policies and practices to ensure compliance with the law and to provide appropriate accommodations and/or modifications. The Human Relations staff also conducted training led by U.S. Department of Justice representatives which focused on the legal and practical aspects of Section 504 of the Act.

The Human Relations staff additionally developed a self-directed training module and presented it to designated office liaison personnel within the Commission who were responsible for utilization of the Commission's new Ultratech TDD, a telecommunications device for the hearing impaired.

The Human Relations staff also continued its seminars on sexual harassment, provided further training opportunities for employees through the revitalized Federal Women's Program and, during the course of regional conferences held during the past fiscal year, provided the Commission's regional employees with training relative to discrimination as addressed in both the Age Discrimination in Employment Act and the Rehabilitation Act.

Commission Budget

The Commission's fiscal year 1989 budget was developed and submitted concurrently to the Office of Management and Budget and the Congress in August 1987. The budget reflected a status quo staffing level to provide continuity of regulatory functions in the absence of the passage of legislation further deregulating the motor carrier industry, and the Commission's streamlined administrative procedures in motor freight, household goods freight forwarding, and railroad matters have further promoted efficient resource use.

Fiscal Year 1987 Appropriations

Commission funding for fiscal year 1987 was included as part of a continuing resolution, Public Laws 99-500 and 99-591 (respectively approved October 18 and October 30, 1986) authorizing the following continuing appropriations:

- *Salaries and Expenses:* For necessary expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed \$1,500 for official reception and representation expenses, \$48,855,000, of which \$53,000 will be derived from unobligated balances of "payments for directed rail service," provided that joint board members and cooperating state commissioners may use government transportation re-

quests when traveling in connection with their official duties as such.

- *Directed Rail Service:* None of the funds provided in Public Laws 99-500 and 99-591 were to be available for the execution of programs the obligations for which could reasonably be expected to exceed \$1,000,000 for directed rail service authorized under 49 U.S.C. 11125 or any other legislation.

Salaries and Expenses Appropriation

On February 25, 1987, Chairman Heather J. Gradison and staff appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the Commission's fiscal year 1987 budget request. The Chairman and staff provided testimony supporting the request to the Subcommittee on Transportation

of the Senate Committee on Appropriations on April 4, 1987.

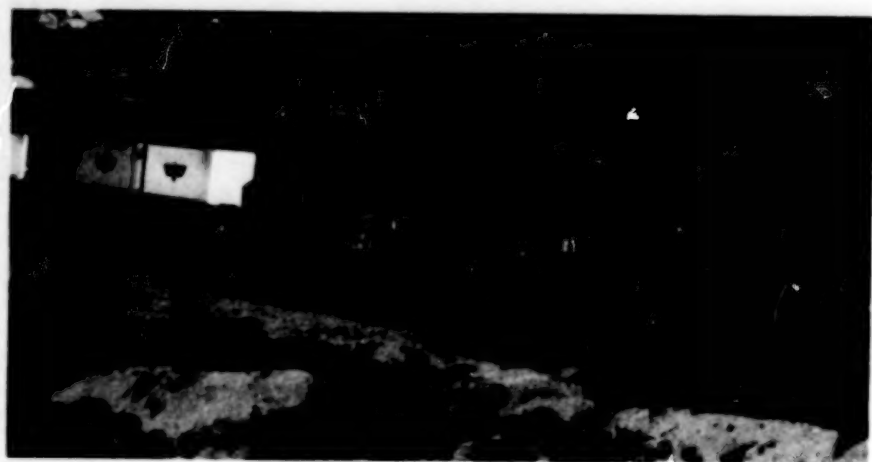
Payments for Directed Rail Service Appropriation

The last instance of directed rail service occurred between October 5, 1979, and March 23, 1980, when the Kansas City Terminal Railway Company provided service over the lines of Chicago, Rock Island, and Pacific Railway Company. The Congress last appropriated funds for this directed service in a fiscal year 1982 supplemental appropriation.

Under the continuing resolution for fiscal year 1987, the unobligated balance of \$53,000 remaining from the Directed Rail Service supplemental appropriation of fiscal year 1982 was transferred to the Commission's Salaries and Expenses account.

Since no new directed rail service is anticipated, no funds were requested for fiscal year 1988.

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RAILROADS

General Financial Condition

The limited rate freedoms granted to the railroad industry by the Staggers Rail Act of 1980 (Staggers Act) have enabled railroads to respond rapidly to the intense downward competitive pressure on rates brought about through price discounting by trucking companies. Consequently, revenues generated by Class I railroads in fiscal year 1987 declined in comparison with those of fiscal year 1986. Railroads face particularly acute truck competition in the eastern half of the country where the highway system is more extensive and where manufactured goods dominate traffic. In contrast, railroad carriage of raw materials and agricultural products prevails in the western half of the country.

Commission data for Class I line-haul railroads for the 12 months ending June 30, 1987, and June 30, 1986, indicate that operating revenues fell 3.3 percent to nearly \$26 billion while revenue ton-miles of freight rose 2.7 percent. This anomaly can be attributed to the competitive downward pressures on truck and rail rates. During the same period, net railway operating income decreased \$147 million to about \$1 billion, and ordinary income rose about \$50.9 million to almost \$1.3 billion. However, after excluding large accounting adjustments by some railroads to record severance pay for employee buyouts and asset write-downs attributable to freight car retirements and line abandonments, net railway operating income declined \$324.4 million to about \$1.8 billion, and ordinary income decreased \$278.1 million to about \$2.1 billion. The rate of return on net investment in transportation property declined from 3.24 percent for the 12 months ending June 30, 1986, to 2.86 percent for the same period of 1987. Excluding large accounting adjustments, the rate of return decreased from 6 percent to

5.15 percent. Large adjustments were recorded in the 12 months ending June 30, 1987, by the Illinois Central Gulf Railroad Company, the Atchison, Topeka and Santa Fe Railway Company, the Soo Line Railroad Company, the Southern Pacific Transportation Company, the St. Louis Southwestern Railway Company, and the Kansas City Southern Railway Company, and in the prior 12-month period by CSX Transportation, Inc., Chicago and North Western Transportation Company, Burlington Northern Railroad Company, and the Union Pacific Railroad Company.

Since passage of the Staggers Act, Class I line-haul railroad employment has declined by about 45 percent. During fiscal year 1987, employment declined 9.5 percent to a monthly average of 253,990 employees, compared to a monthly average of 280,400 employees during fiscal year 1986. Further, the number of maintenance-of-way-and-structures employees and maintenance-of-equipment employees declined by 10.2 percent and 8.1 percent, respectively, during fiscal year 1987. However, rising fuel costs and contractual wage increases are offsetting savings from continued employee reductions. In conjunction with declining revenues from rate competition, this also has contributed to the railroad industry's earnings decline for the 12 months ending June 30, 1987.

The Commission believes that improved railroad profitability will depend upon sustained economic growth plus continued cost reductions, such as those resulting from improvements in productivity and further labor savings.

Reorganizations

Commission activity in railroad reorganizations under Section 77 of the Bankruptcy Act during fiscal year 1987 was limited to determination of the maximum limits of compensation for

the trustees that administered the Boston and Maine Corporation reorganization.¹

Securities

The Commission reviewed few securities matters during the past fiscal year because most securities issued or assumed by railroads have been exempted from regulation. The class exemption applies to securities issued and obligations assumed by (1) Class II and Class III rail carriers; (2) a party acquiring a rail line under the financial assistance provisions of 49 U.S.C. 10905; and (3) any rail carrier, regardless of size, issuing equipment trust certificates.² No filing with the Commission is needed for these types of transactions.

Issuance of securities and assumption of obligations by Class I railroads and holding companies are also exempt from 49 U.S.C. 11301, subject to certain notice requirements. These transactions are automatically exempted unless opposition is registered. Three Class I railroads issued securities under the exemption during fiscal year 1987 without objections.

The exemption does not apply to those securities that are directly related to applications under Section 10901 for rail construction or operation, or to applications under Section 11344 for rail consolidation and mergers. One such application was denied when the underlying merger application was denied.³ The Commission

also exempted an issuance of securities⁴ in connection with a granted consolidation application.⁵

Mergers and Consolidations

The Commission disapproved a major railroad merger proposal on the grounds that its anticompetitive effects were too severe to be remedied through Commission-imposed conditions. The proposal was the combination of the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Transportation Company (SPTC). A majority of the Commission decided to deny the merger at an open voting conference in July 1986, and Santa Fe Southern Pacific Corporation (SFSP), the holding company of both railroads, filed a petition to reopen the proceeding well before the Commission's written decision was served on October 10, 1986.⁶ SFSP had tried to remedy the potential anticompetitive effects through a series of trackage rights agreements with competitors, and SFSP requested and was granted additional time to supplement its petition.⁷ After comments had been received, the parties presented oral argument before the Commission on May 14, 1987. On June 30, a majority of the Commission denied reopening in another open voting conference. Citing the substantial benefits she believed would be achieved by the merger, Chairman Heather J. Gradison dissented.

The Commission found that the agreements between SFSP and the

¹ Finance Docket No. 26115 (Sub-No. 24), *Boston and Maine Corporation Reorganization—(Compensation—State Street Bank and Trust Company and Daniel Golden, Successor Trustees under Second Mortgage Indenture)* (not printed), served December 18, 1986, and Finance Docket No. 26615 (Sub-No. 26), *Boston and Maine Corporation Reorganization—(Compensation—First National Bank of Boston and Malcolm W. Hall, First Mortgage Trustees)* (not printed), served January 12, 1987.

² 49 CFR 117.5.

³ *Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company*, 2 I.C.C.2d 709 (1986), embracing Finance Docket No. 30400 (Sub-No. 7), *The Southern Pacific and Santa Fe Railway Company—Assumption of Obligation and Liability*.

⁴ Finance Docket No. 31000 (Sub-No. 1), *Union Pacific Corporation—Securities Exemption* (not printed), served December 9, 1986.

⁵ Finance Docket No. 31000, *Union Pacific Corporation and BTMC Corporation—Control—Overnite Transportation Company*, _____ I.C.C.2d _____ (1987), served September 23, 1987.

⁶ *Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company*, 2 I.C.C.2d 709 (1986).

⁷ Finance Docket No. 30400, *Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company* (in decisions not printed), served October 9, 1986, and February 3, 1987.



protesting carriers had failed to address all competitive problems, and the Commission concluded that SFSP's trackage rights agreements constituted neither new evidence nor changed circumstances, the standards for reopening a final decision.⁸

The Commission required SFSP to file a divestiture plan within 90 days of the June 30, 1987, vote. The plan was to detail the approach and procedures to be used in divesting at least one of the two involved carriers. The holding company filed its initial plan on September 4, 1987, and later indicated that it intends to divest itself of SPTC. Also during the past fiscal year, the Commission investigated and clarified the provisions of the December 1983 voting trust agreement (under which SFSP placed SPTC) and the duties of the trustee.⁹ The Commission continued to monitor operation of the voting trust.

On November 14, 1986, the Union Pacific Corporation filed an application for it and its wholly owned subsidiaries, Union Pacific Railroad Company (UP) and the Missouri Pacific Railroad Company, to control the Missouri-Kansas-Texas Railroad Company. The Commission accepted the application on December 16, 1986,¹⁰ a pre-hearing conference was held February 10, 1987, and on March 19, 1987, the Commission established a procedural schedule. In a series of decisions, control-related abandonment requests and responsive applications were accepted, and all evidence was received by July 31, 1987. By agreement of the parties, oral hearings were not held and initial briefs were

submitted to the Commission on September 14, 1987. Final briefs were due on October 5, 1987.

In February 1987, the Commission denied a request by dissenting Western Pacific Railroad Company shareholders to reopen the UP control proceeding and to enter a supplemental order determining the fair value of their stock.¹¹ The dissenting shareholders then filed a court appeal.

After a deferral pending negotiations by the parties, oral hearings and oral argument were completed during the past fiscal year in two proceedings involving Guilford Transportation Industries, Inc.'s control of the Boston and Maine Corporation and the Delaware and Hudson Railway Company.¹² The Commission's approval of those proceedings had been affirmed in part on court review, but had been remanded for further consideration of protective conditions involving the Canadian National Railway Company.¹³

Late in the fiscal year, the Commission received notice that the Southern Railway Company intends to acquire Illinois Central Gulf Railroad Company's 199-mile line between Fulton, Kentucky and Haleyville, Alabama plus trackage rights between Centralia and Fulton, Illinois, and to operate a direct route between Birmingham, Ala. and St. Louis, Missouri.¹⁴

The Baltimore & Ohio Railroad¹⁵ (B&O) and the Chesapeake & Ohio

⁸ Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company, —, I.C.C.2d — (1987), served August 4, 1987.

⁹ Finance Docket No. 30400, Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company (not printed), served February 27, 1987.

¹⁰ Finance Docket No. 30800, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Missouri-Kansas-Texas Railroad Company (not printed), served December 16, 1986.

¹¹ Finance Docket No. 30,000 (Sub-No. 1), Union Pacific Corporation, Pacific Rail System, Inc., and Union Pacific Railroad Company—Control—The Western Pacific Railroad Company (not printed), served February 12, 1987.

¹² Guilford Transp. Industries, Inc.—Control—B&M Corp., 366 ICC 294 (1982); and Guilford Transp. Industries, Inc.—Control—D&H Ry. Co., 366 I.C.C. 396 (1982).

¹³ Lamotte Valley R. Co. v. ICC, 711 F.2d 295 (1983); and Central Vermont Railway, Inc. v. ICC, 711 F.2d 331 (1983).

¹⁴ Finance Docket No. 31068, Southern Railway Company and Norfolk Southern Corporation—Purchase—Illinois Central Gulf Railroad Company Line—Between Fulton, KY and Haleyville, AL (not printed), served August 25, 1987.

¹⁵ Finance Docket No. 31033, The Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Railway Company—Merger Exemption (not printed), served May 22, 1987, petition to stay denied in decision served April 30, 1987, which allowed B&O to be merged into C&O.

Railroad (C&O)¹⁶ ceased their separate corporate existence within the CSX Transportation, Inc. system through an intracorporate merger effected by a notice of exemption according to the Commission's rules governing exempt merger transactions at 49 CFR 1180.2(d)(3). Minority shareholders of the B&O have asked the Commission to take jurisdiction over the transaction to determine the value of their shares.

Acquisition, Operation & Construction

In fiscal year 1987, the Commission saw the acceleration of a number of new trends in the area of rail acquisitions. Historically, railroads have sought to acquire other railroads or parts of them, and the Commission has reviewed those proposed acquisitions under Sections 11343-11345 of the Interstate Commerce Act. Now, most rail lines are acquired by noncarriers. The acquiring entities seek Commission approval under Section 10901 to conduct rail operations or, in most cases, they seek an exemption from Section 10901 either by petition or by invoking a class exemption. Under the class exemption procedures, the Commission publishes acquisition and operation exemption notices under 49 CFR 1150.51.¹⁷ In some cases, an acquiring noncarrier is an affiliate of a railroad, requiring the new entity and its rail affiliates to seek approval from the Commission for common control of the new and the old carrier under section 11343 of the Act. This is the legal framework for the growth of the short line rail industry. (See "Short Line Railroads", page 45.)

In response to expressions of concern that the Commission's class exemption procedures governing the acquisition of railroad lines by noncarriers did not give affected parties adequate notice, the Commission sought comment on whether to lengthen the seven-day notice period to 30 days and whether more detailed information should be required.¹⁸

Most of the petitions and notices of exemption from the Commission's regulations governing acquisitions and operations have been unopposed. The Commission ordered an investigation into the Paducah & Louisville Railway, Inc.'s mid-1986 acquisition of Illinois Central Gulf Railroad Company lines in Northern Kentucky.¹⁹ In another instance, involving the acquisition of a 2000-mile line segment by a newly established noncarrier, the Wisconsin Central Ltd., the Commission imposed a stay on its own motion to consider whether this first acquisition of what is effectively a Class II railroad should be allowed to take place according to class exemption procedures. The Commission initially imposed a 45-day stay to provide the public an opportunity to comment and, following receipt of comments, the stay was removed.²⁰ At the close of the fiscal year, the Commission was reviewing approximately one dozen requests to revoke out of approximately 80 filings made under the exemption.

Another new development concerning acquisitions occurred in the intermodal area. A number of large, intermodal acquisitions (see "Inter-


¹⁶ Ex Parte No. 392 (Sub-No. 1), *Class Exemption For Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901* (not printed), served September 30, 1987.

¹⁹ Finance Docket No. 30891, *Paducah & Louisville Railway, Inc.—Acquisition and Operation Exemption—Illinois Central Gulf Railroad Company* (not printed), served May 11, 1987.

²⁰ Finance Docket No. 31102, *Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company* (not printed), served September 11, 1987. The stay was subsequently vacated in a decision served October 8, 1987.

¹⁷ Finance Docket No. 33308, *The Chesapeake and Ohio Railroad Company and CSX Transportation, Inc.—Merger Exemption* (not printed), served September 18, 1987, which allowed C&O to be merged into CSX Transportation, Inc.

¹⁸ See *Class Exemption for Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 F.C.C.2d 810 (1986), *aff'd sub nom. Illinois Commerce Commission v. ICC*, No. 86-1107 (D.C. Cir. May 12, 1987).



modal Transportation," page 73) have been filed and some were approved during fiscal year 1987. The Commission allowed a major railroad, CSX Transportation, Inc., to acquire a major U.S. ocean carrier, Sea-Land, and allowed the Union Pacific Railroad to acquire the Class I trucking company, Overnite Express.

In an action to encourage new and increased competition in the rail industry, the Commission proposed to exempt from its regulations applications for construction and operation of new railroad lines.²¹

The Commission also used its exemption authority to approve a request by the Missouri Pacific Railroad Company (MP) and the Houston Belt & Terminal Railway Company to construct and operate a 500-foot connecting track between MP's line and a line owned by the Southern Pacific Transportation Company (SPTC) in Houston, Texas.²² The Commission's approval of this transaction allowed the applicants to gain access over SPTC trackage and eliminated expensive operations over other track containing numerous road crossings.

Finally, the Commission reopened its 1984 decision approving Star Lake Railroad Company's (Star Lake) plan to construct an 82-mile rail line which would link New Mexico's San Juan Basin coal region with the Atchison, Topeka and Santa Fe Railway Company's main line.²³ The Commission reopened its decision to consider whether the proposed line could be financially viable in light of the construction of a nearby private rail line called the Lee Ranch. As a result, the

railroads revised the plan to involve only 58 miles of track connecting with the Lee Ranch line. The Commission approved this scaled-down version of Star Lake's construction application.

Rates

The Commission made substantial progress in reducing its railroad rate caseload last fiscal year by issuing decisions and fostering the settlement of outstanding disputes through the adjudication of common issues. For example, a number of rate reasonableness cases had been held in abeyance while the Commission developed maximum rate reasonableness standards. With the promulgation of the Commission's coal rate guidelines on September 3, 1985,²⁴ the parties began developing conforming evidentiary submissions. In a number of instances, the parties asked the Commission to hold cases in abeyance while they pursued settlement negotiations, and these efforts led to the private resolution of a significant number of the remaining rate disputes.²⁵

²⁴ Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985).

²⁵ Cases settled by voluntary agreement between the parties during fiscal year 1987 include the following: No. 36047, *International Proteins Corp. v. Baltimore & O. R. Co.* (not printed), served November 14, 1986; No. 36180, *San Antonio v. Burlington Northern, Inc.* (not printed), served January 22, 1987; No. 37021, *Annual Volume Rates on Coal, Rawhide Jct., WY to Sergeant Bluff, IA* and No. 37029, *Iowa Public Service Commission v. Burlington Northern Inc.* (not printed), served January 22, 1987; No. 37437, *Arizona Electric Power Cooperative, Inc. v. Atchison, Topeka, & Santa Fe Ry. Co.* (not printed), served September 11, 1987; No. 37477, *General Electric Co. v. Conrail* (not printed), served September 29, 1987; No. 37886S, *Potomac Electric Power Co. v. Baltimore & Ohio R. Co.* (not printed), served December 10, 1986; No. 38017S, No. 38018S, No. 38019S, *Cleveland Electric Illuminating Co. v. Conrail*, and No. 38020S, *Cleveland Electric Illuminating Co. v. Norfolk & Western Ry. Co.* (not printed), served March 3, 1987; No. 38187S, *General Electric Co. v. Alton & Southern Ry. Co.* (not printed), served December 5, 1986; No. 38401S, *Nevada Power Co. v. Utah Ry. Co.*, and No. 38402S, *Nevada Power Co. v. Union Pacific R. Co.*, and No. 38403S, *Nevada Power Co. v. Denver and Rio Grande Western R. Co.* (not printed), served February 10, 1987; No. 38418S, *Air Products & Chemicals Inc. v. Chessie System* (not printed), served February 5, 1987; No. 38419S, *Terra Chemicals International v. Atchison, Topeka & Santa Fe Ry. Co.* (not printed), served November 14, 1986; No. 39176 (Sub-No. 2), *Soo Line R. Co. v. Chicago & North Western*

²¹ Ex Parte No. 392 (Sub-No. 3), *Class Exemption for Rail Construction* (not printed), served May 29, 1987.

²² Finance Docket No. 30821 (Sub-No. 1), *Missouri Pacific Railroad Company and Houston Belt & Terminal Railway Company—Construction and Operation—Exemption—Houston, TX* (not printed), served November 18, 1986.

²³ Finance Docket No. 28272, *Star Lake Railroad Company—Rail Construction and Operation in McKinley County, New Mexico* (not printed), served April 20, 1987.

Fiscal year 1987 saw the Commission apply the coal guidelines and stand-alone cost methodology in two maximum rate reasonableness coal cases. In the first, the complainant, a public electric generating utility, was awarded approximately \$23 million in reparations.²⁶ The resulting rate levels demonstrated that the guidelines equitably balanced the needs of the nation's railroads for differential pricing between commodities with captive shippers' needs for protection against unreasonably high rates. A rate prescription for the future was not sought because the involved shipper had obtained a negotiated rail transportation contract covering post-complaint movements. The second case also involved a public electric generating utility as the complainant, and in that case the Commission prescribed rates for the future and awarded \$22 million in reparations for past movements.²⁷

By providing parties with a well-defined methodology, the coal rate guidelines and the two cases applying them have facilitated the resolution of other rate reasonableness complaints without the need for further rate litigation. Thus, several significant cases have been settled during fiscal year 1987 because the parties involved were able to anticipate how the Commission would resolve their disputes.

A complaint by the city of San Antonio, Texas, against the Burlington Northern Railroad Company and the Southern Pacific Transportation Company that had led to numerous Commission and court decisions over the years was settled following a Commis-

sion decision awarding the complainants reparations in excess of \$40 million on post-Staggers Act rate increases. The Commission dismissed this case on January 22, 1987,²⁸ and was thanked for its efforts in the parties' motion leading to dismissal.

The Commission has had to address other issues besides stand alone costing in coal rate cases. In one case, the Commission upheld its earlier decision dismissing a complaint embraced within another. In so doing, the Commission ruled against a claim that the dismissal impermissibly shifted the burden of proof.²⁹ In another case, the Commission vacated a rate investigation instituted on its own motion because it was duplicative of a pending complaint and the burden of proof would not shift as a consequence.³⁰

The Commission's maximum rate activities were not limited to coal cases. The Commission proposed simplified procedures to determine rate reasonableness in non-coal movements and sought comments.³¹ The Commission applied these pricing guidelines to make tentative rate unreasonableness determinations in two cases involving wheat and barley movements from Montana points to Pacific Northwest ports,³² and retired rail car movements destined for scrap in the South.³³ Final rate reasonableness determinations will be made in these

²⁶ No. 36180, *San Antonio, Texas Acting by and Through its City Public Service Board v. Burlington Northern Railroad Company and Southern Pacific Transportation Company* (not printed), served January 22, 1987.

²⁷ No. 36114, *Potomac Electric Power Co. v. Consolidated Rail Corporation, et al.* (not printed), served December 11, 1986.

²⁸ No. 37275 (Sub-No. 1), *Coal, Wyoming to Redfield, AR* (not printed), served December 12, 1986.

²⁹ Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings* (not printed), served April 8, 1987.

³⁰ *McCarty Farms, et al. v. Burlington Northern Inc.*, 3 I.C.C.2d 822 (1987), petition to reconsider denied by decision (not printed), served July 1, 1987.

³¹ No. 40073, *South-West Railroad Car Parts Company v. Missouri Pacific Railroad Company* (not printed), served July 10, 1987.

Transportation Co. (not printed), served January 6, 1987; No. 39802, *Iowa Power & Light Co. v. Burlington, Northern R. Co.* (not printed), served November 26, 1986; No. 397835, *Missouri Pacific R. Co.—Petition for Review of Order of Texas R. Commission* (not printed), served April 20, 1987.

²⁸ *Omaha Public Power District v. Burlington Northern Railroad Company*, 3 I.C.C.2d 123 (1986) *aff'd*, 3 I.C.C.2d 853 (1987).

²⁷ *Arkansas Power & Light Company v. Burlington Northern Railroad Company*, 3 I.C.C.2d 757 (1987).

proceedings after further public comments are received.

In asserting rate reasonableness jurisdiction in the Montana grain and retired rail car cases, the Commission found that the defendant railroads had market dominance over the involved traffic. Similar jurisdictional determinations were made in a number of other non-coal rate reasonableness cases.³⁴ Since these determinations were made before the Commission proposed specific non-coal rate reasonableness guidelines, the complainants were asked whether the submission of evidence should be delayed until guidelines became available. In each case, individual complainant preferences were to delay cases pending the Commission's issuance of new guidelines.

In a significant case on remand, the Commission reaffirmed its prior determination that certain rail carrier defendants did not have market dominance over the carriage of fuel oil to a public utility.³⁵ The Commission partially granted a petition by the rail carriers and reopened a major coal rate case to reconsider the issue of market dominance for future rail movements, but refused to reopen and reconsider its market dominance determination with respect to past movements.³⁶ In two other cases covering superheaters, the Commission refused a petition of certain defendant rail carriers to reopen and reconsider previous market dominance findings and rate reasonableness determinations. In so doing, the Commission let stand a prior

decision awarding a complainant more than \$38,000, plus interest.³⁷

Rates for rail transportation are contained in class and commodity common carrier tariffs and in rail transportation contracts.³⁸ In fiscal year 1987, the Commission reviewed each of these areas and made or proposed revisions in its rules.

The class rate structure provides a system for determining a rate for any conceivable rail movement in the nation. More than 40 years ago, all class rates were prescribed, and they served as the maximum reasonable level for all regulated rail transportation. This fiscal year, the Commission vacated the last of these class rate prescriptions.³⁹ Class rates nationwide may now be adjusted according to competitive factors or carrier revenue needs.

New rules for both class and commodity tariff rates were adopted to allow greater rate freedom by reducing the notice period for independently filed new or reduced rates.⁴⁰ New and reduced rates may now become effective on one day's notice.

Divisions arrangements between rail carriers define precisely how the participants to joint rates and through routes share the revenues from specific movements. The Commission modified a 1953 decision prescribing joint rate divisions on movements between the northeast and southwest United States to allow carriers to reach voluntary agreements. The Commission also established a timetable leading to the total repeal of the divisions prescription.⁴¹

³⁴ No. 37010, *General Electric Company v. Delaware & Hudson Ry. Co.* (not printed), served May 4, 1987; No. 37497, *General Electric Co. v. Consolidated Rail Corporation, et al.* (not printed), served May 4, 1987; and No. 381255, *General Electric Company v. The Baltimore and Ohio Railroad Company, et al.* (not printed), served March 25, 1987.

³⁵ No. 380885, *Arizona Public Service Company v. The Atchison, Topeka and Santa Fe Railway Company, et al.* (not pictured), served April 29, 1987.

³⁶ No. 37437, *Arizona Electric Power Cooperative, Inc., v. The Atchison, Topeka and Santa Fe Railway Co., et al.* (not printed), served May 22, 1987.

³⁷ No. 38446, *General Electric Company v. Consolidated Rail Corporation, et al.* and No. 38636, *General Electric Company v. Chesapeake and Ohio Ry. Company* (not printed), served April 6, 1987.

³⁸ 49 U.S.C. 10713.

³⁹ No. 30416, *Class Rates, Mountain Pacific Territory and No. 30660, Class Rates, Transcontinental Rail*, 1950 (not printed), served June 26, 1987.

⁴⁰ *Short Notice Effectiveness for Independently Filed Rail Carrier Rates*, 3 I.C.C.2d 323 (1987).

⁴¹ No. 29886 (Sub-No. 1), *Official—Southwestern Divisions* (not printed), served January 28, 1987.

Significant changes were also made to the Commission's quarterly cost recovery procedures that determine the maximum Rail Cost Adjustment Factor (RCAF) level of the common carrier tariff rate base, and the Commission's rail cost adjustment factor will also be adjusted for forecast errors.⁴² In addition, an extended rate holddown was established under the Commission's newly adopted "banking" procedures that corrects prior cost level overstatements. Effective November 17, 1986, maximum rail cost adjustment factor rates were rolled back to the level in effect on December 31, 1985.

The Commission also revised its methodology for calculating the lease rental portion of the equipment rents component of the rail cost index, and the Producer Price Index for Industrial Commodities Less Fuels and Related Products and Power will now be used.⁴³ The Commission also proposed changes to its methodology for determining interest components.⁴⁴ Comments were requested pertaining to what underlying index data should be publicly available and what should be considered proprietary and subject to confidential treatment.⁴⁵ Proposals were requested for determining annual compliance with the rate cap for recyclable commodities and for preventing inflation-based increases on recyclable rates that exceed the rate cap.⁴⁶

The Commission proposed a new procedure for the prompt incorporation of selective rate increases into master tariffs, and at the close of the fiscal

year was awaiting responses to its request for public comments.⁴⁷

The Commission removed certain restrictions on the National Railroad Freight Committee and, as a result, member carriers will have greater freedom to request open member meetings to discuss collective action, and their votes will remain confidential.⁴⁸ The Commission also modified a prior requirement that minimum weights and rule-related charges be eliminated in their entirety from the Uniform Freight Classification tariff. The Commission concluded that this requirement would unduly complicate tariff filing procedures. Instead, the Commission found that competitive pricing and tariff simplification will be promoted if future changes in minimum weights and rule-related charges are made through independent action and concurrences, and not by collective action.

Responding to legislative changes⁴⁹ and a partial court remand,⁵⁰ new interim rules were adopted governing the filing of rail transportation contracts, contract summaries, contract complaints, and contract discovery.⁵¹ The new rules slightly increase the reporting requirements for agricultural contract summaries, allow carriers to release additional contract information to affected shippers without prior Commission approval, and clarify formal discovery rules. Final adoption of the regulations will be completed in fiscal year 1988.

As a result of the change in contract confidentiality, the U.S. Department of Defense requested and was granted an exemption from the Com-

⁴² *Railroad Cost Recovery Procedures*, 3 I.C.C.2d 60 (1986).

⁴³ *Railroad Cost Recovery Procedures*, 3 I.C.C.2d 621 (1987).

⁴⁴ Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served February 13, 1987.

⁴⁵ Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served August 13, 1987.

⁴⁶ Ex Parte No. 394 (Sub-No. 3), *Cost Ratios for Recyclables—Compliance Procedures*, and Ex Parte No. 290 (Sub-No. 2), *Cost Recovery Procedures* (not printed), served April 20, 1987.

⁴⁷ Special Tariff Authority Nos. 80-1748 and 84-8933, *Extension of Expiration Date of Master Tariff Increases* (not printed), served August 21, 1987.

⁴⁸ *Railroad Interterritorial Agreement*, 3 I.C.C. 2d 110 (1986).

⁴⁹ P.L. 99-509.

⁵⁰ *Water Transport Ass'n v. ICC*, 722 F.2d 1025 (2nd Cir. 1983).

⁵¹ *Railroad Transportation Contracts*, 3 I.C.C. 2d 219 (1986).



mission's contract regulations, except for agricultural commodities.⁵² In another proceeding, the Commission clarified its jurisdiction over the regulation of maximum rates for government traffic.⁵³

One rail carrier sought an exemption from certain tariff rules governing tank car traffic, and the Commission found that the carrier was improperly applying certain allowances that resulted in freight charges less than applicable under the tariffs.⁵⁴ The carrier was directed to modify its tariff and billing practices, but an exemption was granted to avoid billing shippers for undercharges for past shipments.

In contrast to recent years, the Commission received only 10 petitions for exemption to waive demurrage charges, to pay reparations, or for other rate-related relief.⁵⁵ Increased flexibility in carrier rate actions and use of transportation contracts have contributed to this decline in filings.

The Commission also issued several decisions concerning rates on recyclable commodities. In an ongoing rulemaking concerning recyclable rates that was required by the Railroad Revitalization and Regulatory Reform Act of 1976, the Commission affirmed its rate discrimination tests and its pre-Staggers maximum rate reasonableness standard, and rate adjustments and refunds were ordered.⁵⁶

In several specific cases concerning automobile shredder residue that had been held in abeyance pending court approval for adjudicating recyclable rate complaints on an individual basis, the Commission established maximum recyclable rate levels and required defendant railroads to adjust their rates and to pay refunds.⁵⁷ A number of procedural decisions were issued in two consolidated individual recyclable rate complaints, and a Commission decision on the merits was issued in a third case. Appeals were pending before the Commission in these three cases at the close of the past fiscal year.⁵⁸

The Commission made a concentrated effort to resolve outstanding car-hire disputes following last fiscal year's adoption of a new national tank car mileage allowance system.⁵⁹ The tariffs of six railroads providing for non-participation in the new system were ordered canceled and the filing of tariffs in conformity with the current tank car mileage allowance formula was ordered.⁶⁰

Following oral argument before the Commission and an open voting conference, a request for prescription of uniform nationwide allowances on

⁵² *Railroad Transportation Contracts—Exemption—Department of Defense*, 3 I.C.C. 2d ____ (1987), served July 6, 1987.

⁵³ *Omaha Public Power District v. Burlington Northern Railroad Co.*, 2 I.C.C. 2d 123 (1986).

⁵⁴ No. 40124, *Illinois Central Gulf Railroad Company—Petition for Exemption* (not printed), served April 6, 1987.

⁵⁵ For examples, see No. 40122, *Union Pacific Railroad Company—Exemption—to Pay Reparations* (not printed), served October 7, 1986; No. 40123, *Missouri Pacific Railroad Company and International Paper Company—Exemption—Switching Charges* (not printed), served January 15, 1987; and No. 40125, *Union Pacific Railroad Company—Exemption—to Waive Undercharges* (not printed), served January 13, 1987.

⁵⁶ *Investigation of Frt. Rates Recyclable Commod.*, 3 I.C.C. 2d 650 (1987).

⁵⁷ No. 39706, *U.S. Reduction Company v. Louisville & Nashville Railroad Company*, et al. (not printed), served August 13, 1987; No. 39669, *Newell Enterprises, Inc.*, et al. v. *The Atchison, Topeka and Santa Fe Railway Company* (not printed), served May 16, 1987; No. 39647, *Newell Recycling Co., Inc. v. Norfolk Southern Corporation*, et al. (not printed), served June 25, 1987; No. 39814, *Piel Bros. Scrap Iron & Metal, Inc. v. The Atchison Topeka and Santa Fe Railway Company* (not printed), served June 25, 1987; and No. 39756, *Piel Brothers Trading Company v. Chicago and North Western Transportation Company*, et al. (not printed), served August 11, 1987.

⁵⁸ No. 39038, *The Aluminum Association, Inc.*, et al. v. *Alton & Southern Railway Company*, et al. and No. 39065, *Reynolds Metals Company v. The Atchison, Topeka and Santa Fe Railway Co.*, et al. (not printed) served April 5, 1984; and No. 40112, *Aluminum Company of America v. The Atchison, Topeka and Santa Fe Railway Company*, et al. (not printed), initial decision served April 28, 1987.

⁵⁹ *Investigation of Tank Car Systems*, 3 I.C.C. 2d 196 (1986).

⁶⁰ No. 39090, *Cap on Mileage Allowance for Use of Privately Owned Tank Cars*, SP (not printed), served February 9, 1987.

covered hopper cars was denied.⁶¹ The decision reviewed many mileage allowance issues and provided extensive guidance to the industry regarding the Commission's interpretation of the statutory provisions governing this subject. At their request, seven Class II railroads were removed from the new boxcar rules⁶² special provisions for small carriers.⁶³ In addition, the Commission's previous policy proscribing transportation charges for empty rail cars moving to and from private facilities for ordinary maintenance and repair was found inconsistent with law and equity and was reversed.⁶⁴

After suspending and investigating a Consolidated Rail Corporation (Conrail) proposal not to participate in rates for the transportation of certain hazardous chemicals, the Commission ordered the tariff canceled, disapproved Conrail's proposal to provide transportation of these chemicals only under transportation contracts, and affirmed Conrail's common carrier obligation to file rates for regulated commodities.⁶⁵

By the end of the fiscal year, 24 states had been certified to be in compliance with Federal standards and procedures to regulate intrastate rail transportation.⁶⁶ At the request of the State of Indiana, the Commission revoked its certification and assumed direct jurisdiction over its intrastate rail

traffic.⁶⁷ The Commission now exercises jurisdiction over intrastate rail transportation in 17 states.⁶⁸ The U.S. Supreme Court affirmed the Commission's decision denying certification to the State of Texas and assuming jurisdiction over Texas intrastate movements.⁶⁹ Intrastate rail transportation also has been deregulated in seven states⁷⁰ and the District of Columbia. Two state certification applications were still pending at the fiscal year's end.⁷¹

Finally, in a significant intrastate coal rate complaint addressing the interrelationship between state and Federal regulation after the Staggers Act, a court instructed the Commission to vacate its decision because it had become moot relative to the parties involved.⁷² At the close of fiscal year 1987, the Commission was considering whether to adopt the substance of its decision as a policy statement.

Joint Rate Surcharges, Cancellations, and Competitive Access

The Commission completed implementation of a part of the Staggers Act's joint rate cancellation provisions by publishing as final rules long-standing interim rules that prescribed procedures for shippers to request the costs and revenues of rail carriers canceling the application of a joint rate.⁷³

⁶¹ *Lo Shippers Action Committee v. Aberdeen and Rockfish Railway Company, et al.*, ____ I.C.C.2d ____ (1987), served August 31, 1987.

⁶² *Exemption from Regulation—Boxcar Traffic*, 3 I.C.C.2d 23 (1986).

⁶³ *Ex Parte No. 346 (Sub-No. 784)*, Delaware Otsego Corporation—Petition for Exemption—Boxcar Provisions (not printed), served August 11, 1987 and October 9, 1987.

⁶⁴ *General American Trans. Corp. v. Indiana Harbor Belt Railroad Co.*, 3 I.C.C.2d 599 (1987).

⁶⁵ *Classification Ratings on Chemicals*, Conrail, April 30, 1986, 3 I.C.C.2d 331 (1986).

⁶⁶ Alabama, Arkansas, Colorado, Georgia, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Mexico, New York, North Dakota, Oregon, South Carolina, Tennessee, Virginia, Washington, West Virginia, and Wisconsin.

⁶⁷ *Ex Parte No. 388 (Sub-No. 8)*, *Intrastate Rail Rate Authority—Indiana* (not printed), served May 21, 1987.

⁶⁸ Alaska, California, Connecticut, Delaware, Florida, Idaho, Indiana, Louisiana, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Pennsylvania, Texas, Utah, and Wyoming.


⁶⁹ *ICC v. Texas*, ____ U.S. ____, 107 S. Ct. 787 (1987), decided January 21, 1987.

⁷⁰ Arizona, Hawaii, Maine, Massachusetts, Rhode Island, South Dakota, and Vermont.

⁷¹ *Ex Parte No. 388 (Sub-No. 7)*, *Intrastate Rail Rate Authority—Illinois* and *Ex Parte No. 388 (Sub-No. 26)*, *Intrastate Rail Rate Authority—Oklahoma*.

⁷² No. 36793, *Petition for Review of a Decision of the Public Service Commission of West Virginia Pursuant to 49 U.S.C. 11501*.

⁷³ *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge or Cancellation*, 3 I.C.C.2d 703 (1987).



Under these procedures, a carrier is required to provide a shipper, port, or another carrier with a statement of its division of revenues within three days of receipt of a request, and the Commission will provide determinations of the variable cost of service and revenue of the canceling carrier within five working days of the date of request. Failure to comply with these regulations may subject the cancellation tariff to suspension and investigation.

The Commission decided to end the 1953 prescription of divisions of the joint rates between the "Official" and "Southwestern" rate territories. The prescription initially was modified to allow carriers to depart from prescribed rates when they had reached a voluntary agreement for new divisions, and affected carriers were required to file a transition plan so that the entire prescription could be vacated.⁷⁴ By the end of the past fiscal year, the Commission had not yet ruled on the transition plan that had been proposed.

Negotiations regarding the re-establishment or replacement of rates canceled by Conrail in 1981 on movements through the eastern and mid-western rail gateways of the U.S. were monitored in fiscal year 1987. In a procedural decision, the Commission resolved a number of discovery disputes, permitted previously non-participating parties to participate in the negotiations, and clarified applicable procedures for relief.⁷⁵

The Commission also applied its recently adopted competitive access rules⁷⁶ to uphold a cancellation of joint rates protested by a connecting carrier. Under these rules, the Commission considers, among other things, carrier

revenues, route efficiencies, rates, and expected revenues following cancellation. In this instance, the Commission found that the cancellation would not increase rates for shippers and would not be anticompetitive.⁷⁷ The cancellation allowed a small carrier to price its more efficient, direct single-line route independently from its joint line rate with a protesting Class I carrier.

In two other suspended tariff investigations, carriers withdrew proposed cancellations of joint rates and the respective proceedings were discontinued. The proceedings involved joint rates on movements from Union Junction, Wyoming, to Ames and Eagle Grove, Iowa⁷⁸ and movements through a transit point at Gonzales, Texas.⁷⁹ The Commission had suspended the cancellations upon a finding, consistent with the competitive access rules, that the proposals would have eliminated effective rail competition.

During the past fiscal year, the Commission issued its first decision applying its new competitive access rules to a reciprocal switching request.⁸⁰ The rules provide that the Commission will prescribe reciprocal switching if the prescription is necessary to remedy or to prevent any action that is contrary to statutory competition policies, or is otherwise anticompetitive. The Commission again denied Midtec Paper Corporation's request to impose reciprocal switching requirements to allow the Soo Line Railroad Company (Soo line) to serve its Wisconsin Paper Mill over Chicago & North Western Transportation Company (CNW) lines. The Commission denied this request because complain-

⁷⁴ No. 29886 (Sub-No. 1) *Official-Southwestern Divisions in the Matter of Joint Rates Between Official and Southwestern Territories* (not printed), served January 28, 1987.

⁷⁵ No. 38676, *Changes in Routing Provision-Conrail-July 1987* (not printed), served August 28, 1987.

⁷⁶ *Intermodal Rail Competition*, 1 I.C.C.2d 822 (1985).

⁷⁷ I&S No. 9266, *Cancellation of Joint Rates At Bureau, IL, IRR* (not printed), served December 2, 1986.

⁷⁸ I&S No. 9267, *Cancellation of Single-Factor Through Joint Rates on Coal, CNW* (not printed), served December 17, 1986.

⁷⁹ I&S No. 9268, *Cancellation of Joint Route on Transit at Gonzales, TX, SP* (not printed), served March 13, 1987.

⁸⁰ *Intramodal Rail Competition*, 1 I.C.C. 2d 822 (1985).

ants in the proceeding had not shown the existence of an act contrary to the competition policies of 49 U.S.C. 10101a or otherwise anticompetitive.⁸¹ In its decision, the Commission also denied Midtec's request to allow the Soo Line to use CNW's terminal facilities to serve Midtec. The Commission noted that although the use of terminal facilities does not fall under its regulations, the public interest analysis of a request for use of terminal facilities should be similar to that of a request for reciprocal switching. In addition, the Commission expressly stated that a showing of market dominance need not be made in competitive access cases.

The Commission also granted a request by the Denver and Rio Grande Western Railroad Company to use the terminal facilities of St. Louis Southwestern Railway Company (SSW)⁸² in order to reach the tracks of the Missouri-Kansas-Texas Railroad Company.⁸³ The Commission is now considering a petition for clarification and declaratory order filed in that proceeding by St. Louis Southwestern.

In another reciprocal switching proceeding that had been held in abeyance to give interested parties an opportunity to resolve a dispute, the Commission ordered the parties either to resolve the dispute and file a motion to dismiss the proceeding, or to adhere to a procedural schedule for the filing of additional evidence and argument.⁸⁴ In a competitive access proceeding where Western Fuels Association, Inc., is seeking to have Missouri Pacific Railroad Company serve its facilities in

Illinois by reciprocal switching and use of the terminal facilities of the Illinois Central Gulf Railroad Corporation, the record was closed at the end of fiscal year 1987 and is currently being analyzed.⁸⁵

The Southern Pacific Transportation Company (SPTC) petitioned the Commission to compel Union Pacific Railroad Company to enter into a new trackage rights agreement to detour traffic around the Great Salt Lake whenever an SPTC causeway through the lake is either flooded or otherwise rendered inoperable. The Commission declined to act on that request because the parties involved were actively negotiating a new agreement, but it did impose reporting requirements on the parties to monitor their progress.⁸⁶ In a related case, a request by The Great Western Railway for trackage rights over SPTC lines to establish a connection with the Burlington Northern Railroad Company was also denied as unavailable under the statute.⁸⁷

In another proceeding, a Wisconsin shipper's attempt to obtain the services of another carrier for its paper and wood pulp warehouse through an exemption was rejected for lack of Commission jurisdiction.⁸⁸ The shipper was advised that it could proceed under the Commission's competitive access standards if there were a competitive failure.

The lull in activity on joint rate surcharges and cancellations reported by the Commission since fiscal year

⁸¹ No. 40127, *Western Fuels Association, Inc. v. Illinois Central Gulf Railroad Corporation* (not printed), served January 7, 1987.

⁸² Finance Docket No. 30,000 (Sub-No. 46), *Southern Pacific Transportation Company—Detour Rights Around the Great Salt Lake* (not printed), served July 22, 1987.

⁸³ Finance Docket No. 30872, *Request for an Order Directing the Southern Pacific Transportation Company to Negotiate Trackage Rights with The Great Northern Railway Company* (not printed), served October 21, 1986, petition to reopen denied in a decision served August 24, 1987.


⁸⁴ Finance Docket No. 30858, *K&K Warehouse—Exemption from 49 U.S.C. 11104 and 10901(d)* (not printed), served April 23, 1987.

⁸⁵ *Midtec Paper Corporation v. Chicago and North Western Transportation Company (Use of Terminal Facilities and Reciprocal Switching Agreement)*, 3 I.C.C.2d 171 (1986).

⁸⁶ Pursuant to 49 U.S.C. 11103(a).

⁸⁷ Finance Docket No. 30759, *Denver and Rio Grande Western Railroad Company and Missouri-Kansas-Texas Railroad Company v. St. Louis Southwestern Railway Company* (not printed), served January 9, 1987.

⁸⁸ Finance Docket No. 29883, *Universal Forest Products, Inc. v. Seaboard Coast Line Railroad Company (Reciprocal Switching Agreement)* (not printed), served July 24, 1987.



1985 continued into fiscal year 1987.⁸⁹

The nation's railroads added no new negative surcharges and imposed very few light-density-line surcharges. Overall, the revenue impact of surcharge and joint rate cancellation actions during the past fiscal year appears to be minor.

Section 217 of the Staggers Act authorizes individual railroads unilaterally to impose a surcharge or cancel a joint rate when the joint rate does not provide a railroad with 110 percent of its variable costs. The general surcharge provision, which was scheduled to expire by the end of fiscal year 1983, was extended by the Commission for a one-year period. Although authority to impose these positive, regular commodity surcharges expired on September 30, 1984, the Commission granted indefinitely an exemption for negative surcharges (i.e., allowances) in August 1984. The Staggers Act also authorized individual rail carriers unilaterally to impose a surcharge on traffic originating or terminating on light-density lines when existing rates do not provide revenues adequate to cover 110 percent of their variable costs plus 100 percent of the reasonably expected costs of continuing to operate the lines. The Act imposes no expiration date on light-density surcharges.

The inactivity of the past three years in the area of joint rate surcharges and cancellations contrasts sharply with the experience of the first three years following enactment of Section 217 of the Staggers Act. In fiscal year 1981, the number of surcharges went as high as 114, but by fiscal year 1983, that figure had dropped to 64. The number of surcharges has continued to decline, and in fiscal year 1987 only seven surcharges were filed. The number of joint

rate cancellation actions (in terms of Commission Suspension Board actions) grew from 14 during the first year to 33 in the third year, and then dropped to two in fiscal year 1987.

This lessening of activity is due to several factors. As mentioned, railroads were no longer authorized to unilaterally impose positive, regular commodity surcharges after September 1984 and extensive rate contracting replaced negative surcharges as a strategic tool for railroads to divert traffic to favorable routes. The exemption of boxcar traffic at the beginning of 1984 resulted in most joint boxcar rates being put on a combination rate basis, as boxcar traffic had been a leading target of surcharges and cancellations up to that time. Also, the motivation for imposing light-density-line surcharges appears to have waned as railroads found it easy to obtain relief from unprofitable light-density-line operations by selling their lines to short line operators.

To gather information for fiscal year 1987, the Commission contacted Conrail and eight other Class I railroad systems which had previously imposed surcharges. The Commission additionally contacted the American Short Line Railroad Association and the Western Railroad Association and reviewed actions taken by the Commission's own Suspension Board. Information was requested on the imposition and/or removal of regular commodity surcharges, negative surcharges, light-density-line surcharges, and unilateral joint rate cancellations.

The Commission found that the number of regular commodity surcharges still in place during fiscal year 1987 had dwindled. For example, Guilford Transportation Industries—Rail Division reported that it had dropped its surcharge on clay and slurry from the southern U.S., and the Illinois Central Gulf Railroad Corporation (ICG) re-

⁸⁹ Under section 217(c)(1) of the Staggers Rail Act of 1980, the Commission is to include in each annual report an analysis of the preceding year's surcharge and joint rate cancellation activity.

ported that all its regular commodity surcharges had expired.

While railroads are still free to impose unilateral negative surcharges or allowances, they are finding other means of applying competitive pressure. None of the railroads contacted added any new negative surcharges. While some railroads have retained negative surcharge tariffs from prior years, the prevailing practice is to offer allowances through individual contracts.

As in fiscal year 1986, carriers made little use of light-density-line surcharges in fiscal year 1987, and only seven new light-density surcharges were reported. The Soo Line reported three of these and the Southern Pacific Transportation Company one, all at either \$1,000 per car or \$2,000 per car. However, since no traffic is expected to move under these charges, no additional revenue is expected to be generated. The ICG reported two surcharges by a connecting line, the Gulf and Mississippi Railroad Corporation (G&M), a new Class II railroad, with surcharges at \$50 and \$100 per car applying to two major parts of the railroad and limited to 120 days. According to G&M, the revenue expected to be generated by these surcharges is \$2.9 million. All light-density-line surcharges on the ICG itself have been eliminated as a result of abandonment or sale of affected lines. Finally, the Pioneer Valley Railroad Company, Inc., a Class III railroad, imposed a \$500-per-car surcharge on traffic to and from two points.


Unilateral joint rate cancellations continued to decline. Some carriers used these types of cancellations to remove obsolete or unused rates. For example, the Grand Trunk Western Railroad Company reported the cancellation of 40 obsolete tariffs and the Soo Line canceled rates which were no longer applicable to points now served

by short lines in western Minnesota and North Dakota. Aside from these obsolete rate cancellations, two carriers unilaterally canceled joint rates. Conrail canceled joint rates on plastics from the southwest which it intends to replace with multiple independent factor through rates. Under this type of rate, each connecting carrier may independently change its respective portion of the rate. The Denver and Rio Grande Western Railroad Company also canceled a joint rate on crude perlite traffic interchanging with the Burlington Northern Railroad Company.

A Commission staff survey of new short lines and regional railroads conducted in the past fiscal year found that rate arrangements with Class I railroads did not impede the growth of new Class II and Class III railroads. The substantial growth of these carriers is significant, given Congressional concern that joint rate relief actions by Class I railroads might adversely affect the smaller railroads.

The primary objective of the ICC staff study was to identify major issues or problem areas such as labor, service, viability, and also the short lines' working relations (including joint rate arrangements) with Class I connections. The study data base contains 165 new short lines and 12 regional carriers formed since passage of the Staggers Act. Only 4 percent of those shortline railroads responding to the study and only one regional carrier reported that relationships with connecting Class I carriers were poor.

The staff study also sought information on how divisions were established and whether this was a problem area. Most short lines (59 percent) reported that divisions were established through negotiations and contracts, and switching railroads (31 percent) simply responded that they were paid a switch fee directly. Eight percent indi-



cated that they were able to establish their own proportional rates on some commodities, and 18 percent indicated that they used historical divisions subsequent to the creation of a new line. Only 11 percent of the respondents indicated that divisions were a problem area in that they believed that rates were not competitive, higher divisions were desired, difficulties had been experienced in the negotiation of divisions on new traffic, or delays had been experienced in the receipt of payment from connecting carriers.

The reason why so few problems were expressed about rate divisions is probably the fact that divisions are generally part of overall negotiations for rail lines. Since a satisfactory arrangement is a condition of a sale, if purchasers are dissatisfied with arrangements being offered, they presumably would not proceed in the acquisition of a line.

In sum, during fiscal year 1987, some surcharge tariffs were maintained, six new light-density-line surcharges were imposed and, with the exception of obsolete joint rate cancellations, two joint rate cancellations became effective. The measures introduced by the Staggers Act continued to help railroads obtain joint rate relief but were overshadowed by other innovative pricing mechanisms such as contract rates, restricted routing rates, and multiple independent factor through rates. Also, the growth of short line railroads has not been hampered by the pricing actions of Class I carriers and, in most instances, the larger railroads have been cooperating with these new carriers.

Abandonments

The number of miles of track authorized by the Commission to be abandoned by the nation's railroads declined again in fiscal year 1987, coincident with an increase in the trackage sold to new short line carriers and

an improvement in the industry's financial performance following Commission implementation of Staggers Act reforms. The Commission allowed carriers to abandon 1,932.61 miles of track in fiscal year 1987, down from 2,087.85 miles in fiscal year 1986, and 3,444.07 miles in fiscal year 1985. These figures include Commission action taken both by exercising its authority over abandonments under 49 U.S.C. 10903 and by granting exemptions from statutory review according to its exemption authority at 49 U.S.C. 10505.

The past fiscal year was highlighted by a number of innovative Commission actions in the abandonment area. They are described in detail below, and include the following:

- Issuing rules, following a court remand,⁹⁰ to re-establish a class exemption to allow railroads to abandon lines that have been out of service for two years or more;
- Applying statutory forced-sale provisions to lines abandoned by exemption as well as by formal applications;
- Requiring environmental reports to be filed in petitions for exemption as well as in applications for abandonment;
- Imposing a trails-use condition on a discontinuance in a case where elimination of the line was effected by discontinuance rather than abandonment;⁹¹
- Holding that states lack jurisdiction over the abandonment of spurs, industrial teams, switches, or side tracks which are exempt from the Commission's abandonment jurisdiction, even where traffic moving over the tracks is intrastate traffic;
- Requiring that would-be purchasers involved in forced-sale provi-

⁹⁰ See footnote 92, *infra*.

⁹¹ See footnote 111, *infra*.

sions for Conrail track demonstrate their ability to provide rail service for the statutorily required two-year period;

- Revising regulations for computing costs and return on investment used in filing abandonment applications and determining compensation for rail lines transferred under forced-sale provisions; and
- Revising the rate of return figure to be used in abandonment applications.

Of the 1,932.61 miles of track authorized for abandonment during fiscal year 1987, Conrail was granted permission to abandon 115.57 miles. The Commission has taken separate note of Conrail abandonments since 1981 for two reasons. First, Conrail applications were filed under special provisions of the Northeast Rail Service Act of 1981 (NERSA) which provided for automatic approval of Conrail abandonment applications in the absence of purchase subsidy offers. The second reason is that Conrail's abandonment program represented an important part of the long struggle to revitalize rail service in the Northeast following the Penn Central Railroad bankruptcy. Conrail abandonments were down this year, from 177.55 miles authorized in fiscal year 1986 and 327.50 miles in fiscal year 1985. This trend not only reflects the near-termination of this special Conrail program but also reflects a nationwide trend.

Conrail has also sold a number of abandonable lines, and filed 22 applications to abandon an additional 192.92 miles of track. Four applications involving the proposed abandonment of 94.23 miles of track were pending at the end of the fiscal year. Seven offers of financial assistance to purchase Conrail lines totaling 37.36 miles were made and, by the end of the fiscal year, no offers were pending. In nine

proceedings involving 40.07 miles, offers either were found not bona fide, or the parties involved had not reached agreement for the sale of the lines involved. Six applications involving 58.57 miles were dismissed after Conrail and interested parties either reached agreements for the sale of the lines, or accepted Commission-imposed terms of sale. There were 46 "notices of insufficient revenues"—the filing required under NERSA to trigger automatic abandonment—involving the 169.43 miles of line on file with the Commission at the end of fiscal year 1987. Conrail may still file NERSA applications to abandon lines identified in notices of insufficient revenue that were filed with the Commission by October 31, 1985.

Besides the "notice of insufficient revenue" process available to Conrail, abandonment cases are processed in three different ways: a formal application may be filed, subject to considerable evidentiary requirements; an individual petition seeking exemption under 49 U.S.C. 10505 from the formal review process may be filed; or a notice of exemption may be used if a line qualifies under abandonment class exemption rules.

Railroads other than Conrail filed 38 applications for abandonment involving 1,015.35 miles during fiscal year 1987. At the end of the fiscal year, 24 applications to abandon 632.58 miles were pending. The Commission issued decisions on the merits of 25 applications involving 734.46 miles. Of these, two applications involving 31.8 miles were denied. Three applications involving 196.2 miles were dismissed outright and two other applications involving 13.30 miles were dismissed because the lines involved were sold.

As is apparent from these figures, the Commission has granted more applications than it has denied. As the public record in each case indicates,



the lines authorized for abandonment did not provide enough revenue to cover the cost of providing rail service over them and shippers would not be materially adversely affected by abandonment of the lines. The Commission denied abandonment requests where insufficient cost evidence was presented to show that a line was being operated at a loss and where there was shown to be a clear adverse impact on shippers and communities and a minimum burden on the railroad to operate the lines.

Ten abandonment applications involving 199.54 miles were automatically granted because they were unopposed. Among opposed cases, the Commission decided not to investigate four cases involving 91.05 miles, to set ten cases involving 419.27 miles for modified procedure, and to set one case involving 24.60 miles for an oral hearing.

Nine offers of financial assistance to purchase rail lines totaling 59.04 miles were made in non-Conrail proceedings. Two lines involving the transfer of 13.3 miles of track were sold through the abandonment application process during the past fiscal year.

Numerous railroads filed notices of exemption for lines that had been out of service two years or more under the special class exemption procedures provided by 49 CFR 1152, Subpart F. Fifty-two such notices involving 535.63 miles of track were filed with the Commission. On April 4, 1986, the Court of Appeals for the D.C. Circuit reversed and remanded the Commission's decision adopting these exemption procedures.⁸² Proceedings involving abandonment or discontinuance of trackage rights over railroad lines out of service for more than two years were then handled as individual petitions for exemption rather than through the no-

tice of exemption procedures. At its decision issued according to the Court's remand, the Commission reaffirmed its prior decision to exempt rail lines that had been out of service for two years or more, and re-adopted its prior class exemption regulations.⁸³ The Commission also modified its prior rules to provide that a petition for partial revocation may be filed to address whether standard labor protective conditions adequately protect railroad employees. Thus, the notice of exemption procedures are being used again to process exemption requests for lines out of service for two years or more.

At the beginning of fiscal year 1987, 39 other petitions for exemption involving 577.59 miles were pending.⁸⁴ During the fiscal year, 73 additional individual petitions for exemption were filed with the Commission involving 816.65 miles of track proposed for abandonment. Of this total of 112 petitions involving 1,394.24 miles, 88 petitions were granted involving 976.30 miles, six petitions involving 30.81 miles were dismissed, and 18 petitions covering 387.13 miles of track were pending at the end of the fiscal year.

Following an oral hearing before an Administrative Law Judge in Thomasville, Georgia, the Commission denied a CSX Transportation, Inc. (CSX) abandonment request where inappropriate cost evidence had been presented and where there was clear evidence of adverse impact on shippers and communities.⁸⁵ Some shippers had relied on CSX's assurances of continued service when they had established new facilities on the line, and the abandonment application also interrupted negotiations for a reciprocal

⁸² *Exemption of Out of Service Rail Lines*, 21 C.C.2d 146 (1987).

⁸³ The prior annual report incorrectly showed this mileage as 555.85 miles.

⁸⁴ Docket No. AB-55 (Sub-No. 181), CSX Transportation, Inc.—Abandonment—in Thomas and Colquitt Counties, GA (not printed), served June 8, 1987.

⁸⁵ *Single Commerce Commission v. ICC*, 787 F.2d 818 (D.C. Cir. 1986).

switching agreement over part of the line. Following the Commission's denial of the abandonment application, a procedural schedule was established to determine whether reciprocal switching should have been required under the Commission's competitive access rules.⁹⁵ The Commission also denied a Southern Pacific Transportation Company (SPTC) abandonment request where the line in question produced substantial profits and would remain profitable even if short-term maintenance were performed. The Commission determined that, even if SPTC's opportunity costs had been accepted, opportunity costs, standing alone, did not warrant a grant of the abandonment when abandonment would have had a significant impact on shippers and communities.⁹⁷ The Commission also denied an abandonment because inadequate cost and revenue evidence was presented, and there was a strong possibility of increased future traffic.⁹⁸

In a significant abandonment proceeding, the Commission decided to allow offers of financial assistance to be considered in abandonment exemptions.⁹⁹ Previously, offers of financial assistance had only been considered in abandonment applications filed under the requirements of 49 U.S.C. 10903 *et seq.* This Commission decision prompted the institution of a rulemaking proceeding to establish procedures whereby the ICC's financial assistance procedures would be made applicable to class and individ-

ual abandonment exemption proceedings. Under the proposed rules, persons are permitted to submit purchase offers after an exemption is published in the *Federal Register*.¹⁰⁰ While no formal procedures have as yet been adopted, the Commission has followed the approach outlined in the proposed rules in handling offers of financial assistance in pending abandonment exemption proceedings.¹⁰¹ In the same proceeding which prompted this rulemaking, the Commission for the first time interpreted the forced-sale provisions of 49 U.S.C. 10905 to apply to all essential equipment, and not only to fixed assets.¹⁰²

In another major decision, the Commission resolved a conflict between the right of Conrail under NERSA to abandon a line of railroad, and the right of the National Railroad Passenger Corporation (Amtrak) to acquire the use of that line under the Rail Passenger Service Act, and found in favor of Amtrak.¹⁰³ In two other precedent-setting decisions, the Commission required that purchasers of Conrail lines demonstrate financial responsibility both to buy lines and to operate them for the two-year period required by NERSA. The Commission determined in one proceeding that the prospective purchaser had not demonstrated the requisite financial responsibility to purchase and operate the line at issue for a two-year period.¹⁰⁴ How-

⁹⁵ Ex Parte No. 274 (Sub-No. 16), *Exemption of Rail Line Abandonments or Discontinuances—Offer of Financial Assistance* (not printed), served March 11, 1987.

⁹⁷ AB-19 (Sub-No. 125X), *The Baltimore and Ohio Railroad Company Exemption—Abandonment*—In Harrison, Doddridge, Ritchie and Wood Counties, WV (not printed), served May 5, 1987.

⁹⁸ Docket Nos. AB-269 and AB-269 (Sub-No. 1X), *Iowa Terminal Railroad Co.—Abandonment Exemption*—In Cerro Gordo and Floyd Counties, IA (not printed), served January 12, 1987.

⁹⁹ Docket No. AB-167 (Sub-No. 947N), *Conrail Abandonment in Wayne County, MI, and F.D. No. 30896, National Railroad Passenger Corporation—Conveyance of Conrail Line in Wayne County, MI* (not printed), served October 6, 1986.

¹⁰⁴ Docket No. AB-167 (Sub-No. 493N), *Conrail Abandonment of a Portion of the West 30th Street Secondary*

⁹⁵ Finance Docket No. 29883, *Universal Forest Products, Inc. v. Seaboard Coast Line Railroad Company* (not printed), served July 24, 1987.

⁹⁷ Docket No. AB-12 (Sub-No. 113), *Southern Pacific Transportation Company—Abandonment*—In El Dorado and Sacramento Counties, CA (not printed), served August 10, 1987.

⁹⁸ Docket No. AB-43 (Sub-No. 143), *Illinois Central Gulf Railroad Company—Abandonment*—In Champaign County, IL (not printed), served January 10, 1987.

⁹⁹ Docket Nos. AB-269 and AB-269 (Sub-No. 1X), *Iowa Terminal Railroad Co.—Abandonment*—In Cerro Gordo and Floyd Counties, IA (not printed), served October 14, 1986.

ever, in a subsequent proceeding, the Commission found that a prospective purchaser had demonstrated its ability to operate the line for the statutory two-year period by showing the availability of traffic and the ability to rehabilitate the line.¹⁰⁵

In approximately 70 abandonment proceedings, the Commission considered requests filed under the National Trails System Act¹⁰⁶ for the use for recreational trail purposes of railroad rights-of-way approved for abandonment. These rights-of-way are placed in a "rail bank", are available for future restoration of rail service, if needed, and are subject to the Commission's jurisdiction. Under the Commission's rules, interim trails use is dependent on the voluntary agreement of a carrier, and a right-of-way may be transferred to an interested third party, provided that the carrier involved agrees to such a transfer. As a result, rights-of-way subject to Commission jurisdiction were transferred, for example, to a county conservation board¹⁰⁷ and to a public electric generating utility.¹⁰⁸ To terminate trails use, parties must petition the Commission to reopen an abandonment proceeding so that a trails-use certificate may be vacated and a certificate of abandonment issued. Once full abandonment occurs under this procedure, adjacent property owners may assert claims to portions of the right-of-way. The Commission has issued trails-use certificates in several proceedings over the objections of adjacent landowners with re-

versionary interests.¹⁰⁹ The Commission also extended the 180-day time limit for reaching a voluntary trails-use/rail banking agreement in one case while active negotiations continued.¹¹⁰

The Commission additionally determined that its trails-use procedures may be invoked in proceedings exempting the discontinuance of operations by a carrier over a leased line owned by a noncarrier. The Commission found that a carrier's cessation of service does not terminate the Commission's jurisdiction nor a carrier's service obligation. The Commission also found that the issuance of trails-use certificates both precludes the termination of its jurisdiction and protects railroad rights-of-way from reversionary interests, even though a carrier may only have leased a right-of-way.¹¹¹

In a matter of local, headquarters' interest, the Commission continued through the past fiscal year its review of a proposal to abandon a line running through Georgetown, the District of Columbia, into nearby Maryland.¹¹² In that case, the Commission declined to seek injunctive relief to require restoration of a portion of the line which was taken out of service by a carrier at the request of Montgomery County, Md., before the abandonment application was decided. However, the Commis-

Track in New York, NY (not printed), served January 13, 1987.

¹⁰⁵ Docket No. AB-167 (Sub-No. 970N), *Conrail Abandonment in Chicago, IL* (not printed), served February 4, 1987.

¹⁰⁶ 16 U.S.C. 1247(c).

¹⁰⁷ See, e.g., Docket No. AB-1 (Sub-No. 191X), *Chicago and North Western Transportation Company—Abandonment Exemption—Between Maple River and Ida Grove, IA* (not printed), served August 21, 1986.

¹⁰⁸ Docket No. AB-1 (Sub-No. 192X), *Chicago and North Western Transportation Company—Abandonment Exemption—Guthrie and Dallas Counties, IA* (not printed), served May 20, 1987.

¹⁰⁹ See, e.g., Docket No. AB-102 (Sub-No. 13), *Missouri-Kansas-Texas Railroad Company—Abandonment—in St Charles, Warrant, Montgomery, Callaway, Boone, Howard, Cooper and Pettis Counties, MO* (in decisions not printed), served March 16, 1987, and April 27, 1987.

¹¹⁰ See, e.g., Docket No. AB-19 (Sub-No. 121X), *The Baltimore and Ohio Railroad Company—Exemption—Abandonment in Richland County, OH* (not printed), served March 18, 1987.

¹¹¹ Docket No. AB-265 (Sub-No. 1X), *State of Vermont and Vermont Railway, Inc.—Discontinuance of Service Exemption—in Chittenden County, VT, and Finance Docket No. 30702, Trustees of The Diocese of Vermont, et al. v. State of Vermont and Vermont Railway, Inc.*, 3 I.C.C. 2d (1987), served July 17, 1987.

¹¹² Docket No. AB-19 (Sub-No. 112), *The Baltimore and Ohio Railroad Company, Metropolitan Southern Railroad Company and Washington and Western Maryland Railroad Company—Abandonment and Discontinuance of Service—in Montgomery County, MD, and the District of Columbia* (not printed), served May 20, 1987.

sion directed that the line be restored if the abandonment application were denied. The need for an environmental impact statement prevented the Commission from meeting the otherwise applicable statutory deadline in the case.

Also in the environmental area, the Commission found that environmental reporting requirements should be applied to individual petitions for exemptions to abandon lines, to notices of exemption filed under class exemption rules, and to abandonment applications filed under 49 U.S.C. 10903. This will ensure that concerned agencies are informed of an abandonment and may comment on possible environmental consequences of pending proceedings.¹¹³

In an important case analyzing the scope of Federal regulation of interstate commerce, the Commission found that states also lack jurisdiction over the abandonment of spur tracks that are exempt from the Commission's jurisdiction according to 49 U.S.C. 10907(b). In determining whether a spur line is involved, the Commission rejected the "intent" test utilized in prior cases, and instead prescribed a multifaceted analysis including the use, history, and physical characteristics of the line at issue.¹¹⁴ In a subsequent decision, the Commission determined that section 10907(b) deprived the Commission of jurisdiction over team tracks and also deprived jurisdiction to the State of Illinois, even though the traffic that moved over the line constituted intrastate commerce.¹¹⁵

During fiscal year 1987, the Commission adopted revised regulations governing the computation of avoid-

able costs and return on investment in rail abandonment and subsidy determinations. The revised rules distinguish, and group together for separate consideration, the "economic" (return on investment) costs of operations and avoidable operating costs; modify the computation of the rate of return used to determine economic costs by using real pre-tax cost of capital rather than nominal cost of capital; include working capital in the investment base in abandonment proceedings; and incorporate portions of the Regional Subsidy Standards relative to train supplies and expenses, locomotive fuel costs, inflation adjustments, reasonable and just charges, Class II and Class III railroad off-branch costs, and administrative fees.¹¹⁶

The Commission also found that in abandonment proceedings the appropriate rate of return to be used in calculating a railroad's opportunity cost, or other return on investment where real pre-tax cost of capital is prescribed as the rate of return, is 16.5 percent.¹¹⁷ This decision updated the adequate rate of return based on the Commission's 1985 cost of capital determination.¹¹⁸ Nevertheless, the 1986 cost of capital determination was subsequently released and based on the 11.7-percent nominal after-tax rate announced therein, and the 1986 pre-tax real cost of capital was determined to be 14.5 percent.¹¹⁹ The rate of return to be used in calculating opportunity costs and return on investment currently is being modified in accordance with this most recent determination.¹²⁰

¹¹³ *Abandonment Regulations—Costing*, 3 I.C.C.2d 340 (1967).

¹¹⁴ *Abandonment of R. Lines—Use of Opportunity Costs*, I.C.C.2d _____ (1987), served June 4, 1987.

¹¹⁵ *Railroad Cost of Capital—1985*, 3 I.C.C.2d 625 (1987).

¹¹⁶ *Railroad Cost of Capital—1986*, _____ I.C.C.2d _____ (1987), served August 21, 1987.

¹¹⁷ *Ex Parte No. 274 (Sub-No. 3E)*, *Abandonment of R. Lines—Use of Opportunity Costs*.

¹¹³ Docket No. AB-239X, *S.R. Investors Ltd., Doing Business As Sierra Railroad Company—Abandonment*—in Tulare County, CA (not printed), served July 20, 1987.

¹¹⁴ *CNW—Aben. Exmp.*—in McHenry County, IL, 3 I.C.C.2d 366 (1987).

¹¹⁵ Docket No. 40037, *Cheney Line & Cement Co. v. Seaboard System Railroad, Inc.* (not printed), served February 10, 1987.



Exemptions

The Commission continued to exercise the authority conferred to it by Congress in the Staggers Act to exempt people, transactions, and services; to eliminate unnecessary regulations; and to give the nation's railroads the freedom necessary to adjust to rapidly changing market conditions.

Railroads continued to use the class exemption established by the Commission to transfer marginal track to new shortline and regional carriers. (See "Shortline Railroads", below.) The Commission also has issued class exemptions in the areas of rate regulations,¹²¹ acquisitions by rail carriers,¹²² leases,¹²³ trackage rights,¹²⁴ minor transactions within a corporate family and joint relocation projects,¹²⁵ securities,¹²⁶ and joint rates on boxcar traffic and boxcar car-hire charges.¹²⁷ Individual exemptions were used to eliminate certain tariff-filing and rate regulation requirements, as well as for abandonments and minor control and merger transactions. (See the "Abandonments" and "Mergers and Consolidations" sections of this chapter.) These individual and class exemptions reflect instances where regulation was not necessary to implement the national transportation policy, the impact of a proposal on transportation or the public was minimal, or regulation was not necessary to protect shippers from abuses of market power. During the past fiscal year, the Commission processed 178 such notices of exemption under its various class exemption rules and 142 individual petitions for exemptions.

Rail Labor Issues

Rail labor issues continued to play

a prominent part in the Commission's decisionmaking and rulemaking activities in fiscal year 1987. Dozens of new rail operators were created through short line sales by Class I carriers, chiefly through the Commission's expedited exemption procedures. This has produced many benefits, but has not been without criticism. A chief concern of critics has been the Commission's decision not to impose labor protection on these transactions. (See "Short Line Railroads", below.) Labor interests on occasion have sought a stay and/or the revocation of notices of exemption for this reason, and a number of such petitions to revoke, among other issues, were pending at the close of the past fiscal year. Nevertheless, most transactions under the Commission's rules proceeded without complaint. The Commission's policy of refraining from imposing labor-protective conditions absent a showing of special circumstances was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit on May 12, 1987, in its decision summarily affirming, without opinion, the Commission's class exemption procedures.¹²⁸

Another development in the labor area was the Commission's decision to take jurisdiction to review the decision of an arbitrator adjudicating a complaint filed by a rail employee according to protective conditions imposed by the Commission. In a decision which has become known as the *Lace Curtain* case,¹²⁹ the Commission stated that it would consider petitions to review the arbitrator's decision on the basis of the standards for judicial review of an arbitrator's decisions announced by the Supreme Court in the *Steelworkers Tril-*

¹²¹ 49 CFR 1139.10 et seq.

¹²² 49 CFR 1180.2(d)(1) and (2).

¹²³ 49 CFR 1150 and 1180.2(d)(4).

¹²⁴ 49 CFR 1180.2(d)(4) and (7).

¹²⁵ 49 CFR 1180.2(d)(3) and (5).

¹²⁶ 49 CFR 1175.

¹²⁷ 49 CFR 1039.14.

¹²⁸ *Class Exemption for Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1986), *aff'd sub nom. Illinois Commerce Commission v. ICC*, No. 86-1107 (D.C. Cir. May 12, 1987).

¹²⁹ *Chicago & Northwestern Transportation Company—Abandonment—near Dubuque and Oshkosh, IA*, 3 I.C.C.2d 729 (1987).

ogy cases.¹³⁰ The U.S. Court of Appeals for the District of Columbia Circuit had affirmed a district court decision dismissing a petition for review of an arbitrator's decision by holding that the arbitrator's decision resolving a claim arising out of Commission-imposed labor-protective conditions was an order of the Commission. It was thus determined that the arbitrator's decision should be reviewed by the U.S. Court of Appeals under the Hobbs Act as any other Commission order, and that it was not subject to arbitration in Federal district court.¹³¹ The Court also indicated approval of the Commission's assertion of jurisdiction to review arbitrators' awards.

Following the Commission's decision in *Lace Curtain*, four other petitions for Commission review of arbitrators' decisions were filed in fiscal year 1987, and all currently are pending.¹³²

The Commission additionally decided to study another significant labor issue arising from several leases by the Boston and Maine Corporation, Maine Central Railroad Company, and the Delaware & Hudson Railroad Company subsidiaries of Guilford Transportation Industries, Inc., to another Guilford subsidiary, the Springfield Terminal Railway Company.¹³³ The Commission had traditionally imposed

so-called *Mendocino* labor-protective conditions on intracorporate case transactions effected through the Commission's class exemption for intracorporate transactions at 49 CFR 1180.¹³⁴ The Commission instituted its investigation to consider the request of unions representing affected employees that the more vigorous *New York Dock* labor-protective conditions should be applied.¹³⁵

In a proceeding on court remand,¹³⁶ employees who were adversely affected by the rerouting of rail traffic were granted standard *Oregon Short Line* labor-protective conditions.¹³⁷ The rerouting was made simultaneously and interdependent with an abandonment.¹³⁸

Two proceedings involving the interpretation of the labor-protective conditions imposed in the merger that created the Burlington Northern Railroad¹³⁹ were referred to the Commission by District Courts. In one case, the Commission rejected an employee's claim that the Commission lacked authority to decide what were characterized as contract interpretation matters.¹⁴⁰ Under the doctrine of primary jurisdiction, the Commission found that it should be the first to resolve claims that relate to merger compensation guarantees and/or involve interpretation of a provision of the protective conditions that might affect other similarly situated employees.

¹³⁰ *United Steelworkers v. American Mgt. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

¹³¹ *United Transportation Union v. Norfolk & Western Railway, et al.*, No. 85-5003 (D.C. Cir. June 30, 1987).

¹³² Finance Docket No. 28490 (Sub-No. 1), *Atlantic Richfield Co. and Anaconda Co.—Control—Butte, Anaconda & Pac. Ry. Co. and Tooele v. Valley Railway Co.*; Finance Docket No. 28583 (Sub-No. 24), *Burlington Northern Inc.—Control and Merger—St. Louis San Francisco Railway Company*; Finance Docket No. 28605 (Sub-No. 22), *CSX Corporation—Control—Cheese System, Inc. and Seaboard Coast Line Industries, Inc.*; and Finance Docket No. 29430 (Sub-No. 20), *Norfolk Southern Corporation—Control—Norfolk and Western Railway Company and Southern Railway Company*.

¹³³ Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company et al.* (not printed), served May 18, 1987.

¹³⁴ *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

¹³⁵ *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

¹³⁶ *Black v. ICC*, 814 F.2d 789 (D.C. Cir. 1987).

¹³⁷ *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

¹³⁸ No. AB-55 (Sub-No. 127X) *Seaboard System Railroad, Inc.—Abandonment Exemption—In Lake County, IN* (not printed), served July 29, 1987.

¹³⁹ *Great Northern Pac.—Merger—Great Northern*, 331 I.C.C. 228 (1967), *aff'd* 298 F. Supp. 853 (D.D.C. 1968), *aff'd sub nom. United States v. ICC*, 390 U.S. 491 (1970).

¹⁴⁰ Finance Docket No. 21478 (Sub-No. 6), *Great Northern Pacific & Burlington Northern Lines, Inc.—Merger—Great Northern Railway* (not printed), served December 11, 1986.



In the second case, the Commission found that an employee's dismissal did not violate a merger condition.¹⁴¹ The Commission also found that the rail carrier involved was not required to offer separate attrition-type employment contracts with each non-union employee, and that the railroad had a right to transfer its employees throughout its system. The Commission referred to arbitration the question of whether the employee's failure to report to a new assignment in this dispute constitutes just cause for dismissal.

In June 1987, the U.S. Supreme Court vacated an appeals court remand of a Commission decision concerning labor-protection issues arising from trackage rights related to the Union Pacific Corporation's control of the Missouri Pacific Railroad Company and the Western Pacific Railroad.¹⁴² That decision involved an exemption from the Railway Labor Act of crew selection on trackage rights trains. Although the court decided the case on procedural grounds, the effect of its decision is to allow carriers the right to crew their trains operating over Commission-imposed trackage rights. In August 1987, the Commission reopened the Union Pacific-Missouri Pacific control proceeding to allow certain motor carrier subsidiary employees, who may have had insufficient notice of the reopening, an opportunity to file evidence on labor-protection issues.¹⁴³

Short line Railroads

The renaissance of the short line and regional railroad industry contin-

ued to progress in fiscal year 1987, chiefly through the sale of marginal lines by Class I carriers to new corporate entities according to the Commission's class exemption rules at 49 CFR 1150.31, and over 190 new lines have begun operations since the passage of the Staggers Act. The Commission encourages this growth because these railroads conduct regional or local operations more effectively and profitably than do trunk carriers. Often, a line that is marginally profitable or unprofitable to a Class I operator may become economically viable in the hands of a short line operator through more efficient work rules, better management, and closer contact with the shippers and the communities which the line serves. In many cases, short line and regional operations are the alternative to abandonment and consequent loss of rail service. During the past fiscal year, 51 new owners and/or operators were authorized to begin operations in 29 states by means of the Commission's expedited procedures.

An important element in the Commission's policy of fostering the growth of the short line and regional industry has been its refusal to burden new operators with the cost of labor-protective conditions absent a showing of exceptional circumstances. That policy was upheld in judicial review by the U.S. Court of Appeals for the District of Columbia Circuit on May 12, 1987. (See "Rail Labor Issues".)

Seven Class III railroads that incur heavy and increasing car-hire expenses and that desired to follow the procedures for Class I railroads to exercise empty car mileage provisions and procure bilateral agreements requested, and were granted, an exemption from the special provisions contained in the boxcar rules.¹⁴⁴

¹⁴¹ Finance Docket No. 21478 (Sub-No. 7), *Great Northern Pacific & Burlington Lines, Inc.—Merger—Great Northern Railway* (not printed), served March 26, 1987.

¹⁴² *ICC v. Brotherhood of Locomotive Engineers*, _____ U.S. _____, 107 S. Ct. 2360 (1987); 96 L. Ed. 2d 222 (1987).

¹⁴³ Finance Docket No. 30,000, *Union Pacific Corporation, Pacific Rail System, Inc., Union Pacific Railroad Company—Control—Missouri Pacific Corporation and Missouri Pacific Railroad Company* (not printed), served August 17, 1987.

¹⁴⁴ Ex Parte No. 346 (Sub-No. 19A), *Delaware Otsego Corporation—Petition for Exemption—Boxcar Provisions* (not printed), served August 11, 1987.

During the past fiscal year, the Commission continued its ongoing monitoring of the short line industry. Because of substantial public interest in the growth of short lines, the Commission has actively surveyed short line carriers formed since passage of the Staggers Act to establish a current and comprehensive short line data base. In June 1987, the Commission's Office of Transportation Analysis completed a draft report summarizing the data it had collected from approximately 150 short lines established as of May 1986. The data include information on mileage, carloads, commodities, the date when operations began, and labor matters, such as union status and work rules.

In September 1987, all short lines formed since mid-1980 were surveyed to expand the Commission's short line data base to include these new carriers. Also in September, a periodic report on new short lines and regional railroads was finalized. This report was based on data collected from the 150 short lines initially studied, and on carriers newly formed in 1986 and 1987. A resurvey of the original 150 carriers studied was additionally undertaken in September to update the existing data base and to collect information indicating any trends for short line railroads. These data will be included in the Commission's next short line periodic report to be made available in fiscal year 1988.

Freight Car Service

Surpluses of railroad-controlled freight cars continued to decline in fiscal year 1987. The average surplus at the end of December 1986 was 77,158 cars, and that figure had dropped to a daily average of 50,780 cars by the end of September 1987, for a daily average during the fiscal-year period of 69,014 cars. This decline resulted principally from the reduced ownership of railroad equipment. For

example, on October 1, 1986, Class I railroads reported a combined fleet ownership of 816,518 cars, but by October 1, 1987, that ownership level had dropped to 758,629 cars. This was a net reduction in the combined fleet of 57,889 cars, which is the difference between the number of cars installed (3,730) and the number of cars retired or otherwise lost from the control of the Class I carriers (61,619).

On September 30, 1987, the entire rail car fleet of Classes I, II, and III railroads, private car companies, and shippers consisted of 1,297,868 cars, an overall net reduction of 61,432 cars from the prior fiscal year. This figure reflects the overall reduction in rail-car equipment by all contributors to the rail-car fleet.

The average carrying capacity of a freight car placed into rail service during fiscal year 1987 was 91 net tons, a decrease of one net ton under per-car tonnage figures registered ten years ago. While the aggregate carrying capacity of cars installed was 72,709 net tons, there was an aggregate capacity loss of 3,954,291 net tons owing to the retirement of cars accounting for 4,027,000 net tons capacity.

Fiscal year 1987 freight-car loadings totaled 20,277,853, an increase of 888,344 cars over the fiscal year 1986 car loading total of 19,389,509. Relative to individual commodity loadings, coal ranked first in number, with 5,687,379 coal-loaded cars accounting for 28 percent of total cars loaded, but a decrease of 3,316 cars under the 5,690,695 cars loaded in fiscal year 1986. Cars carrying grain ranked second in total loadings with 1,484,369 cars, an increase of 21.8 percent from the fiscal year 1986 loading figure of 1,218,731 cars. The third heaviest commodity loadings were those for chemicals and allied products—1,329,065 cars—or a 6.8-percent in-



crease from the 1,244,326 cars loaded with chemicals in fiscal year 1986.

The greatest percentage increase in fiscal year car loadings—21.8 percent—occurred in the loading of grain, followed by a 10.6-percent increase in farm products (except grain), with lumber and wood products registering a 7.2-percent increase in cars loaded. Last fiscal year saw an 8.3-percent decrease in cars loaded with motor vehicles and equipment, with 971,438 cars versus 1,059,113 cars similarly loaded during the prior fiscal year.

In fiscal year 1987, there were 3,076,415 flatcars loaded with 5,120,715 trailers/containers, a 5.1-percent increase over fiscal year 1986's total of 2,926,072 similarly loaded flatcars transporting 4,855,728 trailers/containers.

The locomotive ownership of Class I railroads on October 1, 1986, consisted of a total of 21,620 units, while on October 1, 1987, such ownership was down to 20,012 units, a 1,608-unit reduction. At the end of fiscal year 1987, Class I railroads had 4 multipurpose locomotives and 4 switch locomotives on order.

During the past fiscal year, the Commission issued one emergency re-routing order in the furtherance of railroad operations.

Passenger Service

Although the Commission's railroad passenger authority is limited, it addressed a number of important passenger-related matters during the past fiscal year. As part of its obligation to resolve disputes between the National Rail Passenger Corporation (Amtrak) and other railroads, the Commission required the Soo Line Railroad¹⁴⁶ to provide Amtrak with access and services for the operation of two special passenger trains, and a proceeding was begun to determine just and

reasonable compensation.¹⁴⁶ Two other Amtrak proceedings were discontinued when Amtrak reached agreement with the purchasers of a Conrail line to allow continued passenger service,¹⁴⁷ and with Conrail itself to compensate Amtrak for the use of its properties in the northeast rail corridor.¹⁴⁸

In a series of decisions, the Commission explained the scope of its jurisdiction over intrastate passenger operations. It found that a discontinuance of service in California, a state that has not obtained Federal certification to regulate intrastate rail transportation matters, was within the Commission's jurisdiction.¹⁴⁹ Similarly, the Commission exempted from regulation the construction and operation of an intrastate rail line that was to be used for passenger excursion service in Pennsylvania, also a noncertified state.¹⁵⁰ It dismissed, however, for lack of jurisdiction, a notice of exemption for the commencement of passenger operations within Tennessee, a certified state.¹⁵¹

In a declaratory order proceeding, the Commission was asked to determine whether the Staten Island Rapid Transit Operating Authority (Staten Island), an intrastate passenger carrier, is a "carrier" within the meaning of the Railway Labor Act.¹⁵² The Commission concluded that it is not a carrier be-

¹⁴⁶ Finance Docket No. 31062, *Amtrak and Soo Line Railroad—Use of Tracks and Facilities and Establishing Just Compensation* (not printed), served June 29, 1987.

¹⁴⁷ Finance Docket No. 30898, *National Rail Passenger Corporation—Conveyance of Conrail Line in Wayne County, MI* (not printed), served December 15, 1986.

¹⁴⁸ Finance Docket No. 30865, *National Rail Passenger Corporation—Compensation—Conrail Freight Charges* (not printed), served February 20, 1987.

¹⁴⁹ Finance Docket No. 30820, *Mendocino Coast Railway, Inc. Discontinuance of Train Service in Mendocino County, CA*, I.C.C.2d ____ (1987), served October 5, 1987.

¹⁵⁰ Finance Docket No. 31018, *Knox & Kane Railroad Co.—Exemption from 49 U.S.C. 10901* (not printed), served May 26, 1987.

¹⁵¹ Finance Docket No. 30914, *Tennessee Valley Railroad Museum, Inc.—Operation—The Alabama Great Southern Railroad Company, et al.* (not printed), served May 12, 1987.

¹⁵² 45 U.S.C. 151.

¹⁴⁶ According to 45 U.S.C. 562(a)(1).

cause regional rail commuter operations are no longer subject to Commission jurisdiction. Although the Staten Island's line was still physically linked to the interstate rail system, all of its interstate freight service had been abandoned and it consequently had no authority to conduct operations in interstate commerce.¹⁵³

Designated agents of the Commission's Office of Compliance and Consumer Assistance issued 12 emergency orders to prevent rail passenger service interruptions, and permission was granted authorizing Amtrak passenger trains to use alternative routes while enroute to their destinations. Such orders are issued whenever a railroad company operating an Amtrak train cannot move the train over its normal route because of circumstances beyond its control and an alternative route exists over the lines of another carrier.¹⁵⁴

ICC Waybill Sample Program

On August 18, 1987, the Commission's Office of Transportation Analysis made available the 1986 ICC Waybill Sample, a sample of rail carload waybills for shipments terminating in the United States during calendar year 1986. These waybill samples are produced each August and cover rail traffic movements for the previous calendar year. The 1986 Waybill Sample contains confidential shipper and railroad waybill data pertaining to individual carload movements, and includes the movements' origins and terminations at freight stations, the names of all participating railroads, data on all railroad interchanges, and the type and number of cars, commodities, and freight revenue involved.

Because the ICC Waybill Sample is the only statistically valid data base

for industrywide rail traffic patterns and flows, it is a highly sought and unique source of data for preparing transportation analyses, studies, and reports. During fiscal year 1986, as it has in past years, the Commission received numerous requests from Federal agencies, state transportation agencies, participants in formal Commission proceedings, and universities for permission to use various data from the ICC waybill samples. However, because of the competitively sensitive nature of the waybill data, the Commission released the requested information only in limited and justifiable circumstances, and then subject to very strict requirements contained in specific agreements designed to protect data confidentiality.


To ensure tighter control over the confidential data within the waybill samples and to clarify procedures pertaining to the release of the data, the Commission issued new waybill rules effective May 16, 1987.¹⁵⁵ These rules also include specific guidelines for filing waybill requests and complaints and expand considerably the content of the Commission's Public Use File containing nonconfidential data on rail traffic movements.

During the past fiscal year, the Commission developed the newly expanded 1986 Public Use File which includes additional traffic characteristics and BEA-to-BEA (Business Economic Area) railroad traffic flows for commodities at the five-digit Standard Transportation Commodity Code (STCC) for 1986 rail movements. This constitutes a significant expansion from prior years when the Public Use File was limited to state origin and destination traffic flows at the three-digit STCC level. Because of the new

¹⁵³ Finance Docket No. 30679, *Staten Island Rapid Transit Operating Authority—Petition for Declaratory Order* (not printed), served October 6, 1987.

¹⁵⁴ 45 U.S.C. 562(c).

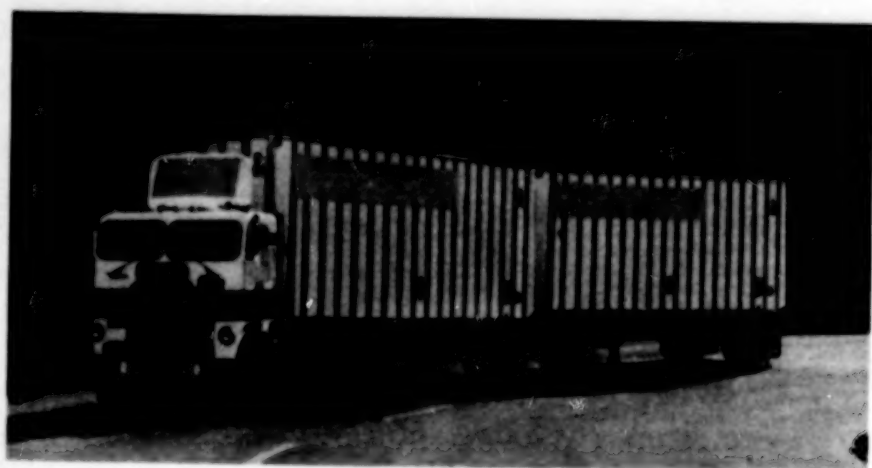
¹⁵⁵ Ex Parte No. 385 (Sub-No. 2), *Procedures on Releases of Data From the ICC Waybill Sample*, served April 16, 1987.



format, the general public will have access to more useful and informative rail traffic data.

Also in May 1987, the Commission initiated a program to computerize information on all waybill data users, waybill requests, and confidentiality agreements filed with the Commission

since 1983. The computerization of this information was undertaken to facilitate the Commission's monitoring of waybill use activity, retrieval of released waybill data, and the detection of inappropriate use of confidential waybill data.



TRUCKING COMPANIES

General Financial Condition

Commission data for 100 of the nation's largest motor carriers of property for the 12 months ending June 30, 1987, and June 30, 1986, show that operating revenues increased 4 percent to \$18.4 billion and revenue tons hauled rose 4.9 percent. However, net carrier operating income declined 5.5 percent to \$841.8 million and net income fell 2.5 percent to \$447.7 million. Consequently, the composite operating ratio (ratio of operating expenses to operating revenues) for these 100 carriers unfavorably rose from 95 percent to 95.4 percent. The rate of return on shareholders' equity declined from 13.14 percent to 11.51 percent.

These carriers reported a large decline in earnings for the first half of 1987 compared to the same period of 1986, and this decline more than offset the improved earnings reported for the last six months of 1986, compared to the corresponding period of the previous year. Thus, an overall earnings decline was reported for the 12 months ending June 30, 1987, compared to the same period of 1986, despite increased revenues and traffic volume. Fierce rate competition and discounting is the primary cause of the earnings decline in 1987. Rate competition during the latter part of 1986 and during 1987 has been as pervasive as at any time since passage of the Motor Carrier Act of 1980 among both less-than-truckload and truckload carriers.

Mergers and Unifications

Motor property carriers continued to use the Commission's expedited exemption procedures to transfer operating authority and to effect changes in their financial structure.¹ Three sepa-

rate sets of procedural regulations are available to parties involved in transactions of this type.

The Commission exempted, on a class basis, transactions between motor carriers of property and between such carriers and noncarriers.² Under these procedures, employees may oppose a transaction proposed for exemption on the basis of adverse employment impacts, and any interested party may oppose a transaction on the basis of possible anticompetitive effects. During fiscal year 1987, approximately 300 proceedings were filed under this class exemption regulation.

Although the Commission may not exempt finance transactions between small motor carriers of property, it adopted the class exemption regulations as the procedural rules for processing small carrier transfers of operating authority.³ A small carrier transfer may be opposed on anticompetitive grounds. During the past fiscal year, more than 500 small motor property carrier transactions were filed with the Commission.

In addition, because of more complex competitive considerations, intermodal exemption transactions including one or more motor property carrier(s) are analyzed by the Commission on a case-by-case basis. Under such circumstances, parties must demonstrate that regulation of a transaction is not necessary to carry out the transportation policy of 49 U.S.C. 10101, and that a transaction is either limited in scope or regulation is not necessary to protect shippers from an

¹otherwise subject to prior approval under 49 U.S.C. 11343(a).

²Exemption of Certain Transactions Under 49 U.S.C. 11343, 133 M.C.C. 449 (1984).

³The motor exemption authority permits the Commission to exempt transactions governed by 49 U.S.C. 11341-11351. Small carrier transactions (i.e., where the parties' aggregate annual revenues do not exceed \$2 million or where the acquiring entity is not a regulated carrier) are governed by 49 U.S.C. 10928, and thus beyond the scope of the exemption power. See *Small Carrier Trans. Reg-Motor Carriers of Property*, 133 M.C.C. 504 (1985).

¹The motor exemption authority is codified at 49 U.S.C. 11343(e). Under this statute, the Commission may exempt finance transactions (mergers, leases or purchases of operating authority, acquisitions of stock control, and similar matters) involving motor carriers of property that are

abuse of market power.⁴ (For further discussion of intermodal acquisitions and mergers, see "Intermodal Transportation" on page 73.)

The Commission regulates the pooling of traffic by motor carriers.⁵ Although competition is reduced or eliminated between pool participants, such transactions may nevertheless benefit the public. Pooling frequently enables carriers to enter or remain in markets by lowering their costs (e.g., creating density or scale economies). The pooling carriers thus strengthen their ability to compete against other carriers and the arrangement offers the possibility of lower prices to shippers. In the past fiscal year, four pooling applications were approved by the Commission.

Rates

Under a negotiated rates policy statement adopted by the Commission in October 1986,⁶ a significant number of complaints were filed with the Commission during the past fiscal year by shippers seeking to defend against court actions instituted by carriers (or trustees in bankruptcy) for the collection of undercharges. These cases involve court referrals to the Commission on the question of the reasonableness of a carrier's undercharge claim.

The Commission undertakes an analysis for the referring court of whether a negotiated but unpublished rate existed for a particular transaction, the circumstances surrounding the assessment of a tariff rate, and any other pertinent facts. At the court's request, the Commission determines the issues

of whether, under all the relevant circumstances, a carrier's collection of undercharges based on the rate contained in the tariff filed with the ICC by the carrier would be an unreasonable practice in violation of 49 U.S.C. 10701(a) and, if a negotiated rate is found to exist, whether that amount is all the carrier should be permitted to collect.

In the first case applying this policy, the Commission found that the evidence of record was not sufficient to show that negotiated rates were mutually agreed upon by the shipper and carrier in question, and the case was reopened for more evidence.⁷ In reaching its decision, the Commission stated that in such cases parties should submit evidence showing that a carrier representative offered a rate to a shipper other than the tariff rate, that the shipper accepted it, and that the shipper reasonably relied upon the quoted rate.

In another proceeding, the Commission found that it was not a reasonable practice for a carrier to collect a tariff base rate for transporting certain shipments of oil drilling equipment.⁸ In this case, the evidence showed that the carrier and the shipper had negotiated a lower special rate that was not published later, and that the shipper had tendered the shipments in reliance on that negotiated rate.⁹

The Commission also has been requested by courts to consider other reasonable-practice issues involving provisions in filed tariffs. In this regard, the Commission found that the appli-

⁴ See *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1992).

⁵ Under 49 U.S.C. 11342(a), the Commission may approve a pooling agreement between motor common carriers of property where it finds that the agreement (1) will be in the interest of better service to the public or of economy of operation, and (2) will not unreasonably restrain competition.

⁶ *NITL—Pet. to Inst. Rule on Negotiated Motor Car.*, 3 I.C.C.2d 99 (1986).

⁷ No. MC-C-10991, *Walsell Food Corporation v. Southwest Freight Lines, Inc.*, _____ I.C.C.2d _____, served June 2, 1987.

⁸ No. MC-C-10982, *TMBR Drilling, Inc. v. Younger Transportation, Inc.* (not printed), served August 7, 1987.

⁹ Similar Commission decisions were issued in No. MC-C-10963, *Fort Howard Paper Company v. Meislin Industries, U.S., Inc.* (not printed), served August 12, 1987; and No. MC-C-30005, *Sovereign Oil Company—Petition for Declaratory Order* (not printed), served August 27, 1987.



cation of certain bill-of-lading notation requirements contained in its tariff rules were unreasonable practices under 49 U.S.C. 10701(a).¹⁰

On the subject of discount rates, the Commission found that certain tariffs violated 49 U.S.C. 10761 and 10762 because they provided no basis for shippers or competing carriers to determine the rates at issue or when the rates would apply.¹¹ However, the Commission declined to institute a rulemaking proceeding that would have adopted rules making payment of a discount to a nonpayer of a freight charge, or failure to show discounts on bills of lading, *prima facie* evidence of an unreasonable practice prohibited by 49 U.S.C. 10701.¹² The Commission concluded that the best way to determine the reasonableness of such practices is on a case-by-case basis.

During fiscal year 1987, the Commission was asked to address various carrier proposals dealing with the problem of the nonpaying shipper. In a number of instances, the Commission suspended and investigated tariff rules providing for certain penalty charges in the event of non-payment.¹³ To address this issue broadly, the Commission instituted a rulemaking proceeding pro-

posing amendments to the credit regulations in 49 CFR 1320.¹⁴ The proposed rules would allow carriers to include reasonable and identifiable collection expense charges as part of the extension of credit to shippers. At the end of the fiscal year, the Commission was considering numerous comments received from the public concerning the proposed rules.

Also during the past fiscal year, the Commission amended its collection-delivery (C.O.D.) shipment rules, codified at 49 CFR 1052, to eliminate the portions dealing with remittance, notification, and record keeping.¹⁵ However, the Commission required that carriers electing to provide C.O.D. service must publish tariffs that contain nondiscriminatory rules regarding collection and remittance of C.O.D. funds. The Commission currently is considering a petition to reopen the proceeding.

In another rulemaking proceeding, the Commission amended its tariff publication rules at 49 CFR 1312 to reduce the notice period for independently filed, single-factor, domestic, motor-water property rates.¹⁶ Under the amended rules, rate reductions and new rates may become effective on one day's notice, and rate increases may become effective on seven days' notice.

Rate Bureaus

During fiscal year 1987, the Commission continued its stepped-up processing of collective ratemaking agreements under 49 U.S.C. 10706, as amended by Section 14 of the Motor Carrier Act. Significant progress was made, as more decisions were issued

¹⁰No. MC-C-10888, *Cooper Industries, Inc. v. Orscheln Bros. Truck Lines, Inc., and Berry S. Schermer Trustee* (not printed), served February 25, 1987, and No. 40058, *Zentel Electronics Corporation—Applicable Tariffs—Petition for Declaratory Order* (not printed), served August 7, 1987.

¹¹No. MC-C-10871, *Roadway Express, Inc. v. Pilot Freight Carriers, Inc.*, (not printed), served December 8, 1986 (embraces Nos. MC-C-10875, *Roadway Express, Inc. v. Consolidated Freightways Corporation of Delaware*; and MC-C-10890, *Roadway Express, Inc. v. Bowman Transportation, Inc.*), petition to reopen in No. MC-C-10875 denied July 14, 1987. See also Special Tariff Authority No. 85-2375, *Hedrick Transportation* (not printed), served October 31, 1986.

¹²Ex Parte No. MC-180, *Petition for Rulemaking—Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges* (not printed), served March 11, 1987.

¹³See, e.g., I & S No. M-30381, *Non-Payment of Delinquent Freight Charges, Central Transport, Inc.* (not printed), served December 5, 1986, and I & S No. M-30382, *Non-Payment of Delinquent Freight Charges, O.K. Trucking Company* (not printed), served December 16, 1986.

¹⁴Ex Parte No. MC-1, *Regulations for Payment of Rates and Charges—Penalty Charges for Nonpayment* (not printed), served April 8, 1987.

¹⁵*Handling of C.O.D. Shipments*, I.C.C.2d _____ served April 13, 1987.

¹⁶*Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates*, I.C.C.2d _____ served May 1, 1987.

in this period than in any prior year. As a result, the Commission (1) provisionally approved, subject to further changes, agreements filed by four rate bureaus; (2) continued provisional approval, subject to further changes, of agreements filed by 11 rate bureaus; (3) dismissed the applications and/or revoked the antitrust immunity of 11 rate bureaus; (4) granted final approval of agreements filed by two rate bureaus; and (5) issued a decision revoking the antitrust immunity of one rate bureau unless that bureau files a revised agreement.

The Commission also issued several rulings interpreting the Motor Carrier Act's prohibition against collective single-line ratemaking. In one proceeding, the Commission held that permitting a rate bureau to cancel a suspended 2.9-percent general increase proposal would not affect the Commission's jurisdiction to consider the lawfulness of independent actions taken by approximately 90 percent of the bureau's member carriers to increase their single-line rates and charges generally by the same 2.9 percent.¹⁷

In a related proceeding, the Commission denied the joint petition of the National Small Shipments Traffic Conference, Inc., and the Drug and Toilet Preparation Traffic Conference, Inc., for rejection or cancellation of 2.9-percent individual increase tariffs.¹⁸ The Commission concluded that an individual carrier's rate action is not irrevocably tainted as a matter of law simply because it is similar to a former collective proposal. The decision held that there is no basis in law for a finding that, solely because a

valid collective action was suspended on reasonableness grounds, carriers are later barred from taking the same or similar increases individually.

Last fiscal year, the Commission authorized the collective republication of lawfully established single-line rates, and concluded that this falls within the 49 U.S.C. 10706(b)(3)(D)(iv) tariff-publishing exception to the single-line collective ratemaking prohibition.¹⁹ The Commission also denied a rate bureau's petition to reopen a decision in which the ICC had found that a tariff supplement which had been jointly proposed by two bureaus violated the single-line collective ratemaking prohibition of 49 U.S.C. 10706(b)(3)(D).²⁰

In another proceeding, the Commission rejected as violative of the statutory prohibition against collective single-line ratemaking a rate bureau's proposed change in the rate-basis factor used to determine class rates on certain general commodity shipments.²¹ The Commission is currently investigating general-increase proposals filed by several rate bureaus to determine their lawfulness under 49 U.S.C. 10706(b)(3)(D). For example, the Commission recently set two such proceedings for modified procedure,²² and in two other proceedings denied, in whole or in part, petitions to vacate suspensions and discontinue investigations of whether a rate bureau's collectively established rule could have

¹⁷No. 39945, *Middle Atlantic Conference Loading and Unloading Charges at Charleston, MA—Petition to Reject* (not printed), served October 27, 1986.

¹⁸Investigation and Suspension Docket No. M-30377, *Terminal Service Charges, NITB*, January 1986 (not printed), served November 26, 1986.

¹⁹Investigation and Suspension Docket No. M-30388, *Change in Rate Basis "Factor" By Collective Rocky Mountain Motor Tariff Bureau, Inc. Procedures* (not printed), served December 31, 1986.

²⁰No. 40110, *Single Factor Through Class Rates From and To Points in New Mexico* (not printed), served September 14, 1987; No. 40110 (Sub-No. 1), *Single Factor Through Class Rates From and To Points in Oregon* (not printed), served September 14, 1987.

¹⁷Investigation and Suspension Docket No. M-30396, *General Increase, RMB*, April 1, 1987 (not printed), served July 13, 1987.

¹⁸No. M-40147, *Petition For Rejection of General Increase Tariff and/or an Order Directing Compliance with the Suspension Decision in I & S No. M-30396* (not printed), served August 3, 1987.



the effect of changing single-line rates in violation of 49 U.S.C. 10706(b) (3)(D).²³

Operating Rights

The Commission's operating rights policies and licensing practices reflected its continuing commitment to promote competition and efficiency in the motor property transportation industry. By observing relaxed entry criteria and decisional standards, encouraging motor carriers to pursue innovative service options, and permitting carriers significantly to expand their service potential through reduced operating restrictions, the Commission's operating rights activity enhanced the competitive environment contemplated by the Motor Carrier Act.

Common carrier authorities issued under the Commission's simplified and expedited licensing procedures typically provided for the transportation of general commodities, with the usual exceptions²⁴ or other broad classifications, within nationwide or expansive regional territories. Such service authorizations were predicated on an applicant's fitness, willingness, and ability to provide the involved service; evidence that applicable statutory and administrative requirements would be observed; confirmation that operations would serve a useful public purpose and be responsive to a public demand or need;²⁵ and a general Commission finding that the requested transportation authorization would not be inconsistent with the public convenience and necessity.²⁶

The Commission continued to ac-

cord applicants wide latitude in responding to these licensing prerequisites. Applicants were permitted to develop their own evidence of operational fitness and service need, without the supporting documentation of other parties, and were required to present only representative evidence of the need for a proposed service. At the same time, the Commission continued to enforce statutory protest standards that strictly limit the circumstances under which competing carriers may oppose requests for operating authority. Taken together, these policies represented inducements to motor carrier entry and promoted the competitive transportation marketplace and the variety of service options contemplated by the Motor Carrier Act.

The Commission adopted rules in accordance with a court decision²⁷ that allow applicants to seek any commodity authorization that is not unduly restrictive.²⁸ The revised rules provide that applicants seeking to perform bulk service under specified commodities authority and carriers seeking to remove bulk operating restrictions from existing authority must establish their fitness, willingness, and ability to transport the commodities in bulk form and demonstrate that the proposed service will be responsive to a public demand or need (common carrier applicants), or consistent with the public interest (contract carrier applicants). In fiscal year 1987, the Commission also adopted several technical revisions to these rules.²⁹

²³ Investigation and Suspension Docket No. M-30397, *Payment of Freight Charges*, M.A.C., June 15, 1987 (not printed), served July 31, 1987; Investigation and Suspension Docket No. M-30402, *Rate Changes By Collective Procedures*, HGCB, August 1987 (not printed), served September 28, 1987.

²⁴ Classes A and B explosives, household goods, and commodities in bulk.

²⁵ See 49 U.S.C. 10922(b)(1).

²⁶ See the proviso to 49 U.S.C. 10922(b)(1).

²⁷ *American Trucking Ass'n. Inc. v. I.C.C.*, 770 F.2d 535 (5th Cir. 1985).

²⁸ Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)*, and Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions from Authorities of Motor Carriers of Property*, 3 I.C.C.2d 394 (1986).

²⁹ Ex Parte No. 55 (Sub-No. 63), *Technical Revisions to 49 C.F.R. Part 1160*, I.C.C.2d _____, served May 15, 1987.

In the area of contract carriage, a court affirmed the Commission's grant of contract carriage for the class of commercial shippers based on applicant assurances that equipment would be dedicated to contracting shippers.³⁰ However, in another case, the court determined that a grant of contract carrier household goods authority to serve a class described as "persons (except individuals) as defined at 1 U.S.C. 1," based on the distinct needs of the class members, was impermissible. The court held that the class at issue was too broad to assure that all of its members had a distinct need for contract carriage of household goods.³¹ In response to the court's decision, the Commission reopened the case as well as 207 related cases to obtain additional evidence to formulate a class description that meets the court's guidelines.³²

Last fiscal year, the Commission adopted rules allowing carriers to provide owner-operators whose compensation is based on a percentage of gross revenue a computer-generated document containing pertinent information on the freight bill, or the freight bill itself.³³ This approach will allow carriers with computerized record-keeping to generate records compatible with their systems, rather than necessitating the creation of additional documents simply to accommodate the existing rule.

Also in the leasing area, the Commission adopted final rules governing the removal and/or return of carrier identification devices upon the termi-

nation of a lease agreement.³⁴ The rules authorize negotiation between the parties to an agreement and permit carriers to withhold final payment to equipment owners pending removal and/or return of identification devices. This approach helps to ensure that a court will not use the Commission's leasing rules to find a carrier liable for the tortious acts of an equipment lessor which continues to display the carrier's identification device on its equipment after lease termination.

The Commission also removed regulations found to be no longer necessary, such as those governing motor carrier operations in Hawaii,³⁵ and embargoes.³⁶ The Commission additionally modified its existing application procedures³⁷ to provide a consolidated procedure for handling both applications for new authority and restriction removals, thus eliminating the need for separate restriction-removal rules.³⁸

In another proceeding, the Commission sought public comments on a proposal to expand the territorial scope of commercial zones and terminal areas.³⁹ The proposal would expand the area covered by the statutory exemption for motor carrier operations in commercial zones and terminal areas.⁴⁰ The Commission intends to re-examine its regulations defining commercial zones and terminal areas in light of economic and demographic

³⁴ Ex Parte No. MC-43 (Sub-No. 16), *Lease and Interchange of Equipment (Identification Devices)—Placards*, 3 I.C.C.2d 92 (1986).

³⁵ Ex Parte No. MC-59, *Motor Carrier Operation in the State of Hawaii; Removal of Rules* (not printed), served February 13, 1987.

³⁶ Ex Parte No. MC-186, *Elimination of Embargo Regulations; Motor Carriers* (not printed), served August 25, 1987.

³⁷ 49 CFR Part 1180.

³⁸ Ex Parte No. M-142 (Sub-No. 4), *Revision of Licensing Procedures to Include Applications for Removal of Restrictions from Authorities of Motor Carriers of Property and Passengers*, ____ I.C.C.2d ____ (1987), served October 6, 1987.

³⁹ Ex Parte No. MC-37 (Sub-No. 40), *Commercial Zones and Terminal Areas* (not printed), served April 26, 1987.

⁴⁰ 49 U.S.C. 10523 and 10526.

³⁰ *Regular Common Carrier Conference v. U.S.*, 803 F.2d 1196 (D.C. Cir. 1986).

³¹ *Global Van Lines, Inc. v. I.C.C.*, 804 F.2d 1293 (D.C. Cir. 1986).

³² No. MC-1745 (Sub-No. 17), *Interstate Van Lines, Inc., Extension—Household Goods* (not printed), served April 8, 1987.

³³ Ex Parte No. MC-43 (Sub-No. 19), *Lease and Interchange of Vehicles (Documents in Lieu of Rated Freight Bills)*, 3 I.C.C. 2nd 887 (1987).



changes since the regulations were last examined in 1976. Options under consideration include expansion of the present population-mileage formula, use of Standard Metropolitan Statistical Areas to define commercial zones and terminal areas, and defining commercial zones reflecting economic development in regions containing more than one major city.

In another area, the Commission denied a request by the U.S. Department of Transportation (DOT) for the Commission to institute a rulemaking to clarify when a single-state movement is subject to the ICC's jurisdiction because it is in interstate or foreign commerce.⁴¹ In its decision, the Commission stated that a case-by-case approach to such controversies was preferable, and thus continued to determine in declaratory order proceedings whether particular transportation movements are interstate or intrastate in nature.

The Commission's workload in this particular area has increased dramatically in recent years. In one instance, the Commission determined that chemical shipments moving from out-of-state points to a St. Louis, Missouri, distribution terminal, and then from that terminal to Missouri points, are interstate in nature.⁴² The Commission cited the shipper's intent that the shipments move interstate, the lack of shipment processing at the distribution facility, and the shipment's short storage time as factors in determining that a motor carrier with interstate operating authority could handle shipments from St. Louis to other Missouri points. The Commission reached the same result when considering movements of gro-

cery items from Texas and California distribution centers to points in Texas and California, respectively, under circumstances similar to those addressed in the Missouri case.⁴³

The Commission has opened other proceedings to determine the interstate or intrastate nature of the transportation of fertilizer within Texas,⁴⁴ the transportation of paper and paper products between points in California,⁴⁵ and the transportation of appliances within Colorado.⁴⁶

Insurance

Before engaging in interstate operations, all regulated motor carriers are required to file with the Commission evidence of security either in the form of certificates of insurance or other types of approved security.⁴⁷ Property brokers are required to file a surety bond or other acceptable alternative security. These filings remain in effect and continuously provide for public protection, regardless of policy terms, until 30 days after the Commission has received a cancellation notice from an insurer showing that a policy has been canceled. Until replacement security is filed with the Commission, carriers must discontinue interstate trucking operations and property brokers are precluded from arranging for the transportation of freight in interstate commerce.

The required amounts of bodily injury and property damage (BI&PD) coverage for property carriers of non-hazardous materials in motor vehicles

⁴¹ No. MC-C-30008, *The Quaker Oats Company—Transportation within Texas and California—Petition for Declaratory Order* (not printed), served August 26, 1987.

⁴² No. MC-C-30002, *Victoria Terminal Enterprises, Inc.—Transportation of Fertilizer within Texas—Petition for Declaratory Order* (not printed), served November 13, 1986.

⁴³ No. MC-C-30044, *James River Corporation of Virginia—Transportation through Woodland, CA—Petition for Declaratory Order* (not printed), served August 10, 1987.

⁴⁴ No. MC-C-30052, *RAC Transport Company, Inc.—Transportation of Appliances within Colorado—Petition for Declaratory Order* (not printed), served August 31, 1987.

⁴⁷ See 49 U.S.C. §10927 and 49 C.F.R. Part 4043.

⁴¹ Ex Parte No. MC-182, *United States Department of Transportation—Petition for Rulemaking—Single-State Transportation in Interstate or Foreign Commerce* (not printed), served February 12, 1987.

⁴² No. MC-C-10999, *Malleck, Inc.—Transportation Within Missouri—Petition for Declaratory Order* (not printed), served June 17, 1987.

over 10,000 pounds in weight is \$750,000; for hazardous materials, \$1 million; for Class A and Class B explosives and certain other hazardous materials, \$5 million. Passenger vehicles with a seating capacity of 16 passengers or fewer are required to have \$1.5 million in security, and vehicles with a seating capacity of over 16 passengers must have \$5 million. Cargo insurance requirements for motor common carriers and freight forwarders are \$5,000 for loss or damage of property carried on one vehicle, and \$10,000 aggregate for loss and damage to property occurring at one time or place. Both the BI&PD and cargo protection provide coverages on a per-occurrence basis. The surety requirement for property brokers is \$10,000.

During fiscal year 1987, a total of 76,547 filings—including new and replacement certificates of insurance and cancellation notices—were received by the Commission from carriers and insurers. High premiums and limited capacity within the BI&PD sector of the insurance industry continued to cause problems for regulated carriers during the fiscal year, and property brokers likewise encountered difficulties in finding surety coverage. These conditions contributed to the large number of insurance filings received by the Commission.

In the past fiscal year, the Commission took a number of measures to alleviate some of the problems confronting the industry. On February 5, 1987, the Commission issued final rules governing applications for self-insurance by motor carriers,⁴⁸ and it received a total of 35 applications for authority to self-insure BI&PD and/or cargo liability during the period. Counting those self-insurance applications on hand at the beginning of fiscal year 1987, 48 applications were decided or

withdrawn, leaving only nine cases pending for decision at the close of the fiscal year. On February 24, 1987, the Commission received investigative reports from the Motor Carrier Task Force and recommendations from the Conference of Interested Parties.⁴⁹

On April 7, 1987, the Commission issued a policy statement which implemented the Liability Risk Retention Act of 1986.⁵⁰ The statement provided that the Commission would accept certificates of insurance and surety bonds from risk retention groups, provided that the groups were established in accordance with the criteria set forth in the 1986 Act, and were licensed as liability insurance companies under the laws of a state.

Regarding property brokers, by an April 9, 1987, decision, the Commission clarified that its regulations at 49 C.F.R. §1034 authorized property brokers to meet the ICC's security requirements by filing security other than prescribed surety bonds.⁵¹ In a related matter, on July 10, 1987, the Commission opened a proceeding⁵² for the purpose of obtaining public comments on the types of security other than surety bonds that would satisfy the ICC's security requirements. The Commission's decision additionally adopted interim rules that authorized the filing of trust funds as an alternative to a surety bond. These interim rules set forth terms and conditions which the Commission would impose on the use of a trust fund. At the close of the fiscal year, the Commission had accepted trust funds from three brokers as financial security filings.

⁴⁸ Ex Parte No. MC-178 (Sub-No. 3), *Investigation Into Motor Carriers Insurance Rates—Conference of Interested Parties*, instituted by order served May 5, 1986.

⁵⁰ Ex Parte No. MC-178 (Sub-No. 4), *Implementation of Liability Risk Retention Act of 1986* (not printed), served April 7, 1987.

⁵¹ Ex Parte No. MC-183, *Clarification of Insurance Regulation, 3 I.C.C. 2d 689* (1987).

⁵² Ex Parte No. MC-5 (Sub-No. 8), *Property Broker Security for the Protection of the Public* (not printed), served July 27, 1987.

⁴⁸ Ex Parte No. MC-178, *Investigation Into Motor Carrier Insurance Rates*, 3 I.C.C. 2d 377 (1987).



In another action, the Commission decided against amending those of its rules at 49 C.F.R. Part 1084 to eliminate cargo liability security requirements for non-household goods freight forwarders.⁵³ The Commission stated in its decision that in enacting non-household goods freight forwarders deregulation, Congress had acknowledged the importance to shippers of established carrier and forwarder liability and had provided the Commission with discretionary jurisdiction with respect to non-household goods freight forwarder cargo insurance. The Commission concluded that, based on comments received in the proceeding, its cargo insurance requirements would be retained pending further study.

In another insurance area, the Commission's staff actively monitored compliance with the insurance regulations by all regulated carriers during the fiscal year. The Commission's monitoring activities included notifying carriers by letter, prior to the effective date of policy cancellation, of the need to submit evidence of replacement insurance; the placing of compliance follow-up telephone calls and visits to business sites when necessary; and, in appropriate circumstances, taking enforcement action to prevent uninsured carriers from operating.

Safety

Motor carrier safety continues to be a primary concern when the Commission evaluates the operational fitness of applicants for new or expanded authority. Consistent with the intent of the Motor Carrier Safety Act of 1984,⁵⁴ the Commission continued its efforts to identify motor carriers with questionable safety records and to scrutinize more aggressively the safety profiles of applicants for authority.

Based on ratings prepared by the DOT, approximately 320 licensing cases involving questionable safety fitness were processed by the Commission during fiscal year 1987. The past fiscal year also saw the Commission grant 102 one-year-term certificates to carriers with conditional safety ratings; 16 conditional certificates to carriers with unsatisfactory safety ratings, with the stipulation that before the applicants may begin to operate under that certificate they must show an improved safety rating or otherwise present compelling reasons why authority should be issued; and 68 unconditional licenses to those carriers which had originally rated less than satisfactory, but had later obtained improved ratings from the DOT. The Commission denied outright six applications because of unsatisfactory applicant safety ratings, and it dismissed one other case. The Commission's scrutiny of carriers with less than satisfactory ratings has not been dependent on DOT intervention in licensing proceedings.

Typically in instances where applicants for authority held "conditional" safety ratings—an indication of the DOT's willingness to accord such carriers the opportunity to improve their safety compliance records—the Commission granted the authority sought, subject to a one-year-term limitation. Such limited-term authority was issued with the understanding that the involved operating rights would expire at the conclusion of the calendar year in which issued, unless the applicant established in a petition for removal of the condition that it was in full compliance with the terms and conditions of its authority, including pertinent statutory provisions and DOT and Commission regulations. During fiscal year 1987, the Commission granted extensions of such limited-term authority in 42 proceedings involving carriers that continued to hold conditional safety ratings

⁵³ Ex Parte No. MC-181, *Elimination of Cargo Liability Security Requirements For Freight Forwarders of Non-Household Goods* (not printed), served August 27, 1987.

⁵⁴ P.L. No. 98-554 (October 11, 1984).

where circumstances warranted additional time to permit the carriers to receive new DOT ratings. Thirteen other proceedings were reopened for further evidence on the issue of the applicants' safety fitness. In these proceedings, the applicants had sought authority that would have enabled them to transport hazardous materials or flammable liquids in bulk form. Because of the nature of these commodities, the Commission determined that closer scrutiny of the applicants' safety fitness was required, and the Commission accordingly requested further evidence in that regard.

Foreign Carriers

A statutory licensing moratorium prohibiting the Commission from issuing authority to carriers domiciled in Mexico, or owned or controlled by Mexicans, remained in effect during the fiscal year, as did President Reagan's order lifting the moratorium with respect to Canadian motor carriers.⁵⁵ As a result, the Commission continued to observe procedures promulgated for the enforcement of the licensing moratorium on Mexican domiciled, owned, or controlled applicants for authority.⁵⁶

Also relative to foreign carrier licensing matters, the Commission continued to implement a provision of the Motor Carrier Safety Act that requires Mexican private carriers and exempt commodity transporters annually to obtain certificates of registration to operate in this country.⁵⁷ During the past fiscal year, the Commission issued 43 foreign-carrier certificates of registration to Mexican domiciled or controlled carriers seeking to transport exempt commodities or to provide private carriage services in the United States.

Household Goods

Prior to the early part of fiscal year 1987, the Commission considered and granted many applications for contract carrier authority for the transportation of household goods by the class of shippers identified as "persons (except individuals) as defined in 1 U.S.C. 1." Grants of authority were based at least in part on a finding that the class of household goods shippers to be served had a distinct and specialized need and therefore satisfied the alternative statutory prerequisite for a contract carrier permit.⁵⁸ In a significant case reviewing one of the Commission's decisions granting such authority, the U.S. Court of Appeals for the District of Columbia Circuit reversed the Commission's earlier decision to grant the class permit. The Court held that the permit did not specify the class to be served with sufficient precision necessary to ensure that the applicant would serve only shippers with distinct needs, and thereby did not ensure that the applicant would function only as a motor contract carrier.⁵⁹ In accordance with the court order, the Commission entered a decision reopening the decision under review, along with 207 related cases.⁶⁰

In reopening the proceedings, the Commission permitted parties to submit additional evidence addressing pertinent issues, including whether the applicant in the case in question had wished the Commission (1) to consider issuing a permit authorizing service to a more narrowly defined class of shippers with distinct service needs; (2) to issue an amended permit that authorized the holder to dedicate equipment to the exclusive use of each shipper in the class in accordance with the appli-

⁵⁵ See 49 U.S.C. 10922(1). On September 23, 1986, the President extended, for a two-year period, the moratorium with respect to Mexican carriers.

⁵⁶ Ex Parte No. 55 (Sub-No 43D), *Certification of Canadian or Mexican Ownership or Control of Applications for Motor Common or Contract Carrier Authority*, 47 Fed. Reg. 42948 (September 29, 1982).

⁵⁷ 49 U.S.C. 10530. See *Certificates of Registration of Certain Foreign Carriers*, 133 M.C.C. 511 (1985).

⁵⁸ 49 U.S.C. 10102(14)(B)(ii).

⁵⁹ *Global Van Lines, Inc. v. ICC*, 804 F.2d 1293 (D.C. Cir. 1986).

⁶⁰ No. MC-1745 (Sub-No. 17), *Interstate Van Lines, Inc., Extension—Household Goods, et al.* (not printed), served April 8, 1987.



cable alternative statutory prerequisite for a permit;⁶¹ or (3) to issue a permit authorizing a carrier to serve the broad class of shippers previously authorized, if it were demonstrated that a shipper had distinct service needs based on a specific showing that a carrier is offering a new service better tailored to fit specified shipper requirements.

The Commission subsequently reopened numerous other applications in which carriers had sought contract authority to transport household goods for "persons (except individuals) as defined in 1 U.S.C. 1."⁶² As the fiscal year came to a close, evidentiary records in the reopened proceedings were being completed. In response to Commission decisions in this area, however, some carriers had sought authority to serve more specifically delineated classes of shippers. For instance, one carrier was granted authority to transport household goods under contracts with antique dealers and auction houses.⁶³

The Commission also instituted a declaratory order proceeding to review the broad question of the lawfulness of household goods discount tariffs that contain a range of discounts, and to consider the effect of binding-estimate authority on the lawfulness of such tariffs.⁶⁴ Statutory provisions require that the rates for transportation services must be contained in tariffs that are in effect, and that carriers may not charge or receive compensation different from the rates specified in the

tariffs.⁶⁵ The statute also requires carriers to publish and file with the Commission tariffs containing the rates for the transportation they provide.⁶⁶ Various petitioners had argued that the variable discount rates tariffs of certain household goods carriers fail to comply with these statutory requirements, since the tariff provisions do not explain the extent of the discounts nor the means employed to determine the amounts of the discounts. These petitioners also had contended that the challenged tariff provisions are similar to other tariff provisions that the Commission has found to violate the statute.⁶⁷

Under the statute, a common carrier of household goods may establish rates based on a carrier's written binding estimate of charges.⁶⁸ Such rates must be available to shippers on a nonpreferential basis. The petitioners argued that, even under the binding estimate provision, the assailed tariffs are unlawful, since discount rates are not made available to all shippers on a nonpreferential basis. At the close of the fiscal year, the Commission was awaiting the filing of public comments in this proceeding.

In a consolidated household goods rate bureau proceeding,⁶⁹ the Commission reversed prior decisions insofar as they prohibited collective action on joint-line rates on government traffic.

In the area of pooling, the Commission granted applications by major household goods carriers to enter into

⁶¹ 49 U.S.C. 10102(14)(B)(i).

⁶² See, e.g., No. MC-1656 (Sub-No. 2), *Ralph Fenners, Inc., Extension—48 States—Contract Carriage*, et al. (not printed), served May 28, 1987; No. MC-106149 (Sub-No. 6), *American Holiday Van Lines, Inc., Extension—Nationwide Contract Carriage*, et al. (not printed), served May 27, 1987; and No. MC-29550 (Sub-No. 3), *Terminal Van Lines, Inc., Extension—Nationwide Authority*, et al. (not printed), served May 15, 1987.

⁶³ No. MC-199199, *Thomas Ryan—Contract Carrier Application* (not printed), served August 19, 1987.

⁶⁴ No. MC-C-30029, *Andrews Van Lines, Inc., et al.—Petition for Declaratory Order* (not printed), served July 20, 1987.

⁶⁵ 49 U.S.C. 10761.

⁶⁶ 49 U.S.C. 10762.

⁶⁷ See Special Tariff Authority No. 86-159, *Household Goods Carriers' Bureau Discounts for Uniquely Assigned Shippers* (not printed), served February 24, 1987; *Regular Common Carrier Conference v. United States*, 793 F.2d 376 (D.C. Cir. 1986); and Special Tariff Authority No. 85-2375, *Haddad Transportation* (not printed), served October 31, 1985.

⁶⁸ 49 U.S.C. 10735(a)(1).

⁶⁹ Section 5a Application Nos. 1 and 4, *Household Goods Carriers' Bureau, Inc.—Agreement—and Movers' & Warehousemen's Association of America, Inc.—Agreement* (not printed), served June 30, 1987.

pooling agreements with some of their carrier-agents.⁷⁰ In one proceeding, the Commission approved a proposed simplified procedure for admitting new participants to the pool.⁷¹ The simplified procedure will alleviate the administrative burden that otherwise would be created by the filing of numerous separate applications.

As the fiscal year concluded, the Commission was reviewing a petition filed by the Movers' and Warehousemen's Association of America, Inc., proposing to increase the minimum declared lump-sum value on household goods.⁷²

The number of complaints received by the Commission concerning household goods carriers during fiscal year 1987 was at the lowest level of any fiscal year since passage of the Household Goods Transportation Act of 1980. Figures for fiscal year 1987 represent a 10-percent decline from those received in fiscal year 1986, the previous record-low year.

The Independent Trucker

During fiscal year 1987, the Commission finalized several pending proposals and policies which clarified the options and responsibilities that owner-operators have in their relationships with authorized carriers, private carriers, and shippers. The Commission's action provided for greater flexibility in owner-operator dealings with both regulated and nonregulated transportation alternatives.

The Commission adopted final rules permitting motor carriers to provide computer-generated printouts in lieu of rated freight bills at time of settlement with independent contrac-

tors, provided that the printouts contain the same information as rated freight bills.⁷³ The new rules recognize the technological changes occurring in the motor carrier industry and the cost savings of reduced paperwork burdens, while at the same time retaining the disclosure requirements, verification rights, and protections afforded owner-operators.

In another area affecting independent truckers, the Commission also put in place final rules governing the removal and/or the return of carrier identification devices upon termination of a lease agreement. (See "Operating Rights," page 55.)

Relative to owner-operator compensation, the Commission declined to impose rules concerning the effect of insurance-related tariff increases in surcharge form on the revenue split between carriers and owner-operators.⁷⁴ The Commission noted that carriers may not unilaterally alter the formula or method of owner-operator compensation specified in a lease, but emphasized that whether or not surcharge amounts are included in the revenues subject to division depends on the contract terms and intentions of the parties.

Owner-operators took a renewed interest in the Commission's revised single-source leasing policy during the past fiscal year with the implementation of a Commission decision to eliminate the requirement that private carriers and shippers negotiate such leases for a minimum of 30 days.⁷⁵ Independent truckers may now lease to shippers and private carriers on trip, daily, weekly, monthly, or any other basis, and the Commission's Office of

⁷⁰ No. MC-F-17950, *Mayflower Transit, Inc., d/b/a Aero Mayflower Transit Company, Inc., et al.—Pooling Application* (not printed), served February 10, 1987; and No. MC-F-17831, *Bellini Van Lines Co.—Pooling—Stevens Van Lines, Inc.* (not printed), served November 21, 1986.

⁷¹ See No. MC-F-17950, *Mayflower*, *supra*.

⁷² Ex Parte No. MC-61, *Released Rates of Motor Common Carriers of Household Goods*, petition to reopen filed August 20, 1987.

⁷³ Ex Parte No. MC-43 (Sub-No. 19), *Lease and Interchange of Vehicles (Documents in Lieu of Rated Freight Bills)*, [49 CFR Part 1057], 3 I.C.C. 2d 857 (1987).

⁷⁴ Ex Parte No. MC-178 (Sub-No. 1), *Petition For Investigation of Insurance Surcharges*, served February 5, 1987.

⁷⁵ Ex Parte No. MC-122 (Sub-No. 2), *Lease Of Equipment And Drivers To Private Carriers—Petitions For Modification*, 3 I.C.C. 2d 85 (1986).



Public Assistance disseminated notices of this policy change and published updated materials on single-source leasing to inform independent truckers of their newly expanded options. The Office of Public Assistance also responded to a large number of written and oral questions both from owner-operators and shippers interested in instituting such service.

This further relaxation of the Commission's already eased private carrier leasing criteria afforded owner-operators an added opportunity to compete in the transportation marketplace. It opened up to owner-operators the possibility of leasing to shippers and private carriers with seasonal, sporadic, or occasional needs for drivers and equipment.



BUS COMPANIES

General Financial Condition

The downward trend in the ridership levels of Class I intercity bus companies, which began in the early 1960's, continued during fiscal year 1987, and the continuation of fare discounts by certain airlines and the relative stability of gasoline prices, which enhanced automobile usage, contributed to the further decline in bus ridership.

Commission data for 10 of the nation's largest bus companies for the 12 months ending June 30, 1987, and June 30, 1986, show that operating revenues fell 12.1 percent as revenue passengers carried declined substantially, by 19.1 percent. Net carrier operating income declined from a \$50.4 million profit to an \$8 million loss, and net income decreased \$26.7 million to \$8.4 million. Consequently, the composite rate of return on shareholders' equity for these 10 bus companies decreased substantially to 1.97 percent from 8.93 percent.

The two largest carriers, Greyhound Lines, Inc. and Trailways Lines, Inc., had accounted for about 60 percent and 20 percent, respectively of the total Class I bus industry's operating revenues. Significant changes in the management of these companies occurred during fiscal year 1987 as the bus operating assets of Greyhound Lines were sold by the Greyhound Corporation in March 1987 to the GLI Holding Company, an investor group led by a former chief executive officer of Trailways. In July 1987, the Commission permitted the GLI Acquisition Company, an affiliate of Greyhound Lines, to lease, under temporary authority, the interstate and intrastate operating rights and other assets of Trailways Lines, subject to conditions, until final disposition of the affiliate's application for permanent authority.¹ Tem-

porary operational authority was granted because the Commission found that a further decline in Trailways' financial condition could force the carrier to curtail or eliminate its operations in the near future.

Operating Rights and Rates

The Commission decided 665 applications filed by motor carriers for authority to transport passengers, and only three of these were denied on the merits. A total of 631 carriers requested certificates to operate as common carriers, and the remainder sought permits to operate as contract carriers. Of these applications, 553 were filed by carriers seeking initial authority and 112 were extensions of existing authority. Nearly 90 percent of the applications for certificates sought authority to conduct charter or special operations, and the remainder were for authority to provide scheduled operations over a specified route. Most of the applicants for regular-route authority requested intrastate authority under the state pre-emption provisions at 49 U.S.C. 10922(c)(2)(B) on the route over which interstate authority also was requested.

The application of GLI Acquisition Company (GLI) to purchase the operating rights and some operating assets of Trailways Lines, Inc., and to conduct the latter's operations is a major case in this area. The Commission's grant of the concurrent application for temporary authority to lease Trailways Lines' operating rights and other assets was made subject to specific conditions.² The conditions intended to preserve Trailways' real property interests, to maintain existing interline, interchange, and access arrangements with independent members of the National Trailways Bus System and other

¹ No. MC-F-18506-TA, GLI Acquisition Company—Purchase—Trailways Lines, Inc.; GLI Acquisition Company—Control—Continental Penhandle Lines, Inc. (not printed).

served July 2, 1987, as modified by decision served July 8, 1987.

² Id.

independent bus lines, and to prevent any other changes of such permanent or irrevocable nature as would preclude the resumption of basic services, should the proposed purchase ultimately not be approved. As the fiscal year concluded, the permanent application was still pending.³

Congress recently enacted legislation to clarify the extent of the Commission's pre-emptive jurisdiction under intrastate licensing provisions and to authorize intrastate regular-route operations.⁴ Under this legislation, a condition is required on intrastate certificates permitting a bus carrier to provide intrastate service on only those routes over which the carrier is conducting interstate service. While the interstate service must be actual and substantial, the interstate and intrastate services need not be identical nor provided in the same vehicle.⁵ In this regard, the Commission issued a notice served on all affected carriers and concurrently published in the *Federal Register* requesting that the condition be attached to all intrastate certificates.⁶ The condition has been included in all subsequently issued certificates.

Congress also enacted legislation that changed the entry policy for motor common carriers of passengers receiving governmental financial assistance, and two new categories of applicants were established, the "private" recipient and the "public" recipient of governmental financial assistance.⁷ Applications for charter or special authority filed by a public recipient are subject to a new entry test that no existing motor

common carrier is willing and able to provide the proposed transportation or that the proposed transportation will be conducted only within the area in which an applicant conducts mass transportation, regular-route service. All other recipients' applications are governed by the existing public-interest entry test.⁸ As part of the public-interest test, the legislation also requires the Commission to consider the amount and extent of the assistance received by the applicant. If the applicant is a public recipient, the Commission additionally must consider an opponent's ability to compete. A rule-making soon will be initiated to include in the Commission's application procedures these additional considerations.

During the past fiscal year, several courts reviewed a number of Commission decisions concerning the licensing of motor passenger carriers. Two Commission decisions reviewing the scope of its jurisdiction to authorize intrastate operations were remanded for further findings.⁹ The U.S. Court of Appeals for the Ninth Circuit concluded that the Commission's jurisdiction is limited and does not authorize a carrier to conduct intrastate services which operate independently of interstate services.¹⁰ On remand, the Commission is to make further factual findings concerning the relationship, if any, between the proposed intrastate services and pre-existing or simultaneously approved interstate services which are or will be in actual operation. The court's decision was issued before the legislative amendment that similarly limited the scope of intrastate operations. A number of cases on this question still were pending at the close of the fiscal year.

In another case, the Commission's earlier denial of a request by a protes-

³No. MC-F-18906, *GLJ Acquisition Company—Purchase—Railways Lines, Inc.*; *GLJ Acquisition Company—Control—Continental Penhandle Lines, Inc.*

⁴Section 240, Surface Transportation and Uniform Relocation Assistance Act of 1987 (Act), Pub. L. No. 100-17, 101 Stat. 132, effective April 2, 1987.

⁵H.R. Rep. No. 100-27, 100th Cong., 1st Sess., 242 (1987), reprinted in U.S. Code Cong. & Ad. News No. 3 (May 1987).

⁶52 Fed. Reg. 15,395 (April 28, 1987).

⁷Act, supra, Section 339.

⁸49 U.S.C. 10822(c)(3).

⁹*Fordbus Systems, Inc. v. C.P.U.C.*, 801 F.2d 1120 (9th Cir. 1986).

¹⁰*Id.*



tant in an intrastate/interstate application proceeding for discovery of extensive information concerning an applicant's present and proposed operations was generally affirmed. The court did remand on the issue of the discoverability of certain information pertaining to schedules, routes, and service points.¹¹ The court held that the Commission is entitled to extreme deference with regard to discovery requests under the standards established by those reforms of the Bus Regulatory Reform Act of 1982 presently governing applications. On remand, the Commission ultimately dismissed the case because the protestant did not pursue its discovery requests.¹²

The U.S. Court of Appeals for the District of Columbia affirmed another of the Commission's decisions under established criteria that a carrier's transportation of an airline's crew between an airport and overnight accommodations entirely within a single state was in interstate commerce, but exempt from Commission regulation under the Commission's "incidental to air" exemption.¹³ The contract between the carrier and the airline for the motor leg of the trip was viewed as a common arrangement between the motor carrier and the out-of-state air carrier which established that the interstate transportation at issue was interstate—not intrastate—in nature.

The U.S. Court of Appeals for the Ninth Circuit also approved the Commission's modification of the criteria developed in motor property cases to determine in the review of sightseeing operations whether a carrier's routings were used as a subterfuge to avoid

legitimate state regulation.¹⁴ The decision under review concluded that sightseeing tours between Las Vegas and the Hoover Dam within Nevada, which briefly cross the Arizona state line at the other side of the dam, are bona fide interstate transportation. The relevant inquiry, the court confirmed, is whether the carrier has an independent economic or operational justification for the routing with regard to sightseers.

The Commission concluded three rulemaking proceedings last fiscal year which affect motor passenger carriers' operations. Regulations concerning baggage liability at 49 CFR 1063.4(c) were amended to allow a motor passenger carrier to refuse to accept money as a checked baggage article for which it incurs liability for loss or damage,¹⁵ and the Commission eliminated as unnecessary rules in Subpart A of 49 CFR Part 1042 which provide procedures for obtaining motorbus superhighway and deviation operating authority.¹⁶ These eased-entry standards allow passenger carriers the same flexibility as do the motor property carrier superhighway and deviation rules to quickly obtain authority for operational changes. Finally, regulations requiring licensed carriers to display their ICC authority numbers were amended to exempt limousines with a capacity of six passengers or fewer engaged in a luxury-type service.¹⁷

Carriers continue to take advantage of the Commission's authority to pre-empt state exit jurisdiction and grant permission to discontinue intrastate operations over interstate routes. The Bus Act requires that the Commission give great weight to the extent to which revenues exceed vari-

¹¹ *Lafayette Blue Lines, Inc. v. I.C.C.*, 810 F.2d 280 (D.C. Cir. 1987).

¹² No. MC-29457 (Sub-No. 9), *Delaware Valley Transportation Co., Extension—New York, New Jersey, and Pennsylvania Regular Routes* (not printed), served August 19, 1987.

¹³ *Pennsylvania Public Utility Comm. v. U.S.*, 812 F.2d 8 (D.C. Cir. 1987).

¹⁴ *Gray Line Tour Co. of Southern Nevada v. I.C.C.*, 824 F.2d 811 (9th Cir. 1987).

¹⁵ *Checked Baggage Prohibitions & Liability Exemptions*, 3 I.C.C. 2d 119 (1986).

¹⁶ *Ex Parte No. MC-85 (Sub-No. 7), Passenger Motor Carrier Superhighway and Deviation Rules*, I.C.C. 2d ____ (1987), served July 29, 1987.

¹⁷ *Identification of Motor Vehicles*, 31 C.C. 2d 115 (1986).

able costs in cases where transportation is proposed to be discontinued. In proving an accounting of revenues, a carrier petitioning for exit permission may exclude revenues from any point, including end points, on a route to be discontinued even though the points may continue to be served otherwise by the carrier.¹⁸

During fiscal year 1987, 15 petitions were filed under the Commission's service discontinuance procedures. Fourteen were filed by Trailways Lines and one by the Southern Greyhound Lines Company. Four petitions, including the petition of Southern Greyhound Lines, were unopposed and granted. Trailways withdrew the 11 remaining petitions and, of those 11 proceedings, 10 were dismissed at the close of the fiscal year as a result of the proposed purchase by GLI Acquisition Company and the Greyhound Lines system of all of the interstate and intrastate operating authority of Trailways Lines.

No new petitions were filed during the past fiscal year under the Commission's procedures to pre-empt state rates jurisdiction and allow intrastate rate increases where a state has denied, or failed to consider, a carrier's request.

Two earlier petitions filed by Trailways Lines were granted in fiscal year 1987 to allow intrastate rate increases within Alabama¹⁹ and Texas.²⁰ In the Texas proceedings, the Commission reopened a prior decision to consider excursion fares in comparison with published fares, consistent with the court remand of a similar decision. The

Commission found on reopening that most of the ticket sales at issue in the reopened proceeding had been at the standard published rate and that the excursion fares in question were comparable to the published fares. As a result, the Commission affirmed its prior decision permitting Trailways' request to increase intrastate rates.

Service

In fiscal year 1987, 277 complaints were received by the Commission from passengers utilizing intercity passenger service. These figures represented a 10-percent increase over the number of similar complaints received during fiscal year 1986. The majority of the complaints received during the past fiscal year involved carrier failure to provide scheduled service; delays in providing service in accordance with published operating schedules; service provided by unauthorized carriers; and occasional in-transit service failures, such as equipment breakdowns. In addition, there were 70 complaints involving passenger carriers' handling of parcels, luggage, and small shipments.

Thirty-two complaints were received involving overcharges in connection with rates or charges published in the tariffs governing carrier assessments for services provided. Sixty-eight complaints involved dissatisfaction with the manner in which claims were handled by carriers.

Since passenger carriers continued to experience difficulties during the year in maintaining required insurance levels, the Commission's field staff devoted considerable attention to bringing passenger carriers into compliance with the Commission's insurance requirements. The Commission's field staff conducted full-scale compliance surveys at the headquarters facilities of 17 passenger carriers, and the Commission also continued its program of passenger carrier inspections

¹⁸Mem., *Alabama Public Service Comm'n. v. U.S.*, 8d 13 F.2d 472 (D.C. Cir. 1987).

¹⁹No. MC-C-30004, *Petition of Trailways Lines, Inc., for Review of a Decision of the Alabama Public Service Commission Pursuant to 49 U.S.C. 11501(e)* (not printed), served October 15, 1986.

²⁰No. MC-C-10955, *Petition of Trailways Lines, Inc., et al., for Review of a Decision of the Railroad Commission of Texas Pursuant to 49 U.S.C. 11501* (not printed), served July 9, 1987.



at tourist attractions in an effort to identify compliance with the ICC's operating and insurance regulations. This program resulted in the fiscal-year 1987 inspection of 1,238 passenger vehicles, and instances of non-compliance discovered through the program were generally corrected by administrative consultation between the Commission and the carriers involved.

As mentioned above, in response to GLI's application demonstrating Trailways Lines' deteriorating financial operating condition, with reports of a

36-percent reduction in scheduled service miles and a 42-percent loss of passengers carried in intercity service between 1982 and 1986, the Commission granted GLI temporary authority to lease and manage the interstate and intrastate operating rights of Trailways.²¹ This temporary authority will continue in force until final disposition of the finance application for permanent authority, unless otherwise ordered by the Commission.

²¹ No. MC-F-18505 TA, GLI Acquisition Company, *supra*.

FREIGHT FORWARDERS, WATER CARRIERS, AND PROPERTY BROKERS

Freight Forwarders

Congress enacted the Surface Freight Forwarder Deregulation Act of 1986 (the Act)¹ during the past fiscal year, and by doing so provided for substantial deregulation of the non-household goods segment of the surface freight forwarding industry. The Act eliminated Commission entry and rate regulation over this segment of the industry, removed antitrust immunity for collective ratemaking activities, and removed the prohibition against the ownership of a rail, motor, or water carrier by a non-household goods freight forwarder. It also added a new statutory provision limiting state regulation of interstate forwarders,² and retained and clarified regulatory controls over the household goods surface freight forwarder industry.³ It also preserved Federal regulatory jurisdiction over all surface freight forwarders in the area of cargo liability and claims settlement procedures. The Commission quickly moved to implement this new legislation,⁴ and the transition was a smooth one.

Prior to the Act, local cartage agents performing pickup or delivery services for regulated freight forwarders were exempt from regulation.⁵ However, under the *Kingpak* line of cases,⁶ where such services were performed for exempt forwarders, the Commission required the service provider to hold appropriate common carrier authority because the Commission's exemption rules apply only to services performed in conjunction with the services of regulated carriers. Because the Act deregulated non-

household goods freight forwarders, the *Kingpak* rule arguably would have required previously exempt local cartage agents to obtain authority to continue to provide service. In its decision implementing the Act, the Commission overruled the *Kingpak* line of cases to avoid this unintended anomaly.

The Act gave the Commission discretionary authority to continue to require all freight forwarders to file with the Commission a bond, insurance policy, or other type of security covering loss of, or damage to, cargo.⁷ The Commission instituted a rulemaking proceeding to determine whether to use its discretionary authority to continue to impose cargo liability security requirements on non-household goods freight forwarders.⁸ Finding that Congress had acknowledged the continued importance to the shipping community of clearly established carrier and forwarder liability, the Commission concluded that the cargo liability security requirements should be retained for all segments of the forwarding industry.⁹

Also as a result of the new legislation, the Commission discontinued a proceeding which had proposed application of the Commission's motor carrier restriction-removal provisions to freight forwarders.¹⁰ The Commission took such action in response to the elimination of licensing and economic regulatory authority over most of the forwarders that might have used the proposed provisions to expand their service potential. The Commission noted that household goods forwarders holding narrow authorities that pre-date recent liberal licensing poli-

¹ P.L. 99-521, 100 Stat. 2993 (October 22, 1986).

² 49 U.S.C. 11501(g).

³ See 49 U.S.C. 10102(10).

⁴ Ex Parte No. MC-184, *Regulation of Household Goods Under Freight Forwarder Deregulation Act of 1986*, 3 I.C.C. 2d 162 (1986).

⁵ 49 U.S.C. 10523(b).

⁶ See *Triangle Trucking Co., Inc., Contract Carrier Application* 128 M.C.C. 386 (1977), and *Kingpak, Inc., Investigation of Operations*, 103 M.C.C. 318 (1966).

⁷ 49 U.S.C. 10927(c)(2).

⁸ Ex Parte No. MC-181, *Elimination of Cargo Liability Security Requirements for Freight Forwarders of Non-Household Goods* (not printed), served December 8, 1986.

⁹ *Id.*, 1 I.C.C. 2d, ____ (1987), served August 27, 1987.

¹⁰ Ex Parte No. MC-142 (Sub-No. 2), *Freight Forwarder Restrictions* (not printed), served August 17, 1987.

cies may use conventional licensing procedures to obtain broader service authorizations and to remove unduly burdensome operating limitations.

In another significant proceeding, the Commission reversed prior decisions mandating use of so-called "Section 10721" rates on government freight tendered to a motor carrier by a freight forwarder.¹¹ Under this statutory section, motor common carriers transporting property (including household goods) for the government may do so at reduced rates.¹² Carriers routinely negotiate such rates with the government, but common carriers also negotiate and enter into contracts with freight forwarders.¹³ The Commission determined that motor common carriers handling government traffic for freight forwarders were authorized, but not required, to make the Section 10721 tenders available to forwarders. The Commission also found that prior decisions allowing freight forwarders to use the underlying motor common carriers' Section 10721 tenders as a matter of right impermissibly interfered with motor carrier contracts with freight forwarders.

Water Carriers

During fiscal year 1987, the Commission amended its rules to exempt water contract carriers from all tariff filing requirements.¹⁴ The Commission did so upon concluding that a blanket tariff filing exemption would enable water contract carriers to better compete among themselves and with other transportation modes, and to offer their shippers more responsive, flexible, and efficient services at reduced rates. The Commission noted that corre-

sponding benefits had, in fact, been realized by motor contract carriers of property under the blanket filing exemption they had been granted.

In another significant decision, the Commission proposed to exempt several types of water service and to restore a small-craft exemption that previously had been removed.¹⁵ In 1943, the Commission initially exercised jurisdiction over small craft because of a perception that carriers operating both large and small craft could use unregulated small-craft operations unjustly to discriminate in favor of preferred shippers.¹⁶ In its proposal to revise this approach, the Commission tentatively concluded that, given the current inherent competitiveness of the trade, and the limited use of small craft, regulation of small craft operations is no longer necessary to prevent discrimination.¹⁷

The Interstate Commerce Act allows the Commission to exempt the transportation of passengers between places in the United States through a foreign port when ICC jurisdiction is not necessary to carry out the national transportation policy,¹⁸ and the Commission proposed to exempt such transportation during the past fiscal year.¹⁹ This statute also directs the Commission to exempt transportation of property on a vessel furnished by a water contract carrier to a noncarrier when the noncarrier is transporting its own property and the Commission finds its jurisdiction unnecessary to carry out the national transportation policy.²⁰ The Commission has expressed the belief that a limitation on the supply of vessels available for lease to private carriers leads to ineffi-

¹¹ Ex Parte No. MC-107, *Transportation of Government Traffic*, ____ I.C.C. 2d. ____ (1987), served February 25, 1987.

¹² 49 U.S.C. 10721.

¹³ 49 U.S.C. 10766.

¹⁴ Ex Parte No. MC-165 (Sub-No. 2), *Exemption—Water Contract Carriers—Tariff Filing Requirements*, 3 I.C.C. 2d 506 (1987).

¹⁵ Ex Parte No. 467, *Exemption of Water Carrier Operations* (not printed), served April 24, 1987.

¹⁶ Ex Parte No. 157, *Application of Part III to Transport by Small Craft*, 260 I.C.C. 155 (1943).

¹⁷ Ex Parte No. 467, *supra*.

¹⁸ 49 U.S.C. 10544(b).

¹⁹ Ex Parte No. 467, *supra*.

²⁰ 49 U.S.C. 10544(e).

cient use of equipment and is unnecessary to ensure competition, and thus proposed to exempt all such leasing activities.²¹

The statute further directs the Commission to exempt the transportation of property by a water carrier if it finds that a carrier is transporting only the property of a person owning substantially all of the voting stock of the carrier.²² The Commission proposed to define what constitutes ownership of substantially all of such voting stock (tentatively found to be 80 percent of a water carrier's voting stock) and to issue a general certificate of exemption to cover such operations.²³ Finally, the statute requires the Commission to exempt from its jurisdiction water contract carrier transportation of certain classes of commodities when it finds that the transportation at issue is not actually and substantially competitive with rail or motor transportation of the commodities involved.²⁴ The Commission solicited comment on the classes of water contract service that might be exempted under this section.²⁵

Property Brokers

Property brokerage continued to be a significant transportation growth area throughout fiscal year 1987. As a result of the relaxed entry standards and licensing procedures brought about by the Motor Carrier Act, there are now over 5,000 licensed property brokers, and the industry is highly decentralized and competitive.

During the past fiscal year, the Commission reviewed its regulations

governing property brokers at 49 CFR Part 1045 in response to a petition by Senn Trucking Company requesting that the Commission amend those rules to clarify broker responsibilities.²⁶ In denying the petition, the Commission concluded that there was insufficient evidence to suggest that improper practices within the broker industry were so serious or pervasive as to require further ICC investigation or remedial action. The Commission's decision found that the number of broker-related complaints was, in fact, quite low in view of the explosive growth of the industry in recent years. Further, the Commission concluded that any residual problems in this burgeoning service area best could be handled through existing mechanisms for redress, as well as the exercise of prudent business judgment by shippers and carriers and self-regulation within the industry.

The Commission did, however, seek public comment on the advisability of amending its regulations at 49 CFR Part 1043 to permit property brokers to file other evidence of security as an alternative to filing a Form BMC 84 surety bond.²⁷ The Commission's proposed amendments, also adopted by the ICC as interim guidelines, provide for the filing of other evidence of broker financial responsibility in the form of a trust fund agreement showing that a broker has established such a fund in the amount required by 49 CFR 1043.4.

²¹ No. 39962, Senn Trucking Company—*Lawful Practices of Property Brokers—Petition for Rulemaking* (not printed), served December 2, 1986, petition for reconsideration denied June 5, 1987.

²⁷ Ex Parte No. MC-5 (Sub-No. 8), *Property Broker Security for the Protection of the Public* (not printed), served July 20, 1987.

²² Ex Parte No. 467, *supra*.

²³ 49 U.S.C. 10544(f)(1).

²⁴ Ex Parte No. 467, *supra*.

²⁵ 49 U.S.C. 10544(c).

²⁶ Ex Parte No. 467, *supra*.

INTERMODAL TRANSPORTATION

The Commission continued to promote the growth of intermodalism through expedited decision making in several significant intermodal consolidations during fiscal year 1987.

The Commission permitted one of the nation's largest railroads, CSX Transportation, Inc. (CSX) to acquire a large United States ocean carrier, the Sea-Land Corporation, thus creating one of the world's largest international intermodal carriers.¹ This acquisition will help CSX to provide rail and water service in competition with all water service, most of which is performed by foreign flag carriers. Concluding that CSX and Sea-Land do not compete, and that the acquisition would not violate the Panama Canal Act,² the Commission found that its approval of the transaction was not required.

The Commission also approved the control of Overnite Transportation Company, the nation's seventh largest motor common carrier, by the Union Pacific Corporation (UPC).³ The consolidation will enable UPC's western railroad carrier subsidiaries and Overnite, an eastern motor carrier, to provide an integrated, nationwide intermodal operation focusing on less-than-truckload service. The Commission found the transaction to be in the public interest and procompetitive.

The Commission additionally approved the acquisition of North American Van Lines, Inc., by the Norfolk Southern Corporation, a railroad carrier, under its liberalized standards for reviewing rail-motor mergers.⁴ By special legislation, the Congress required that these standards be applied to acquisition applications filed with the ICC between July 20, 1984, and September

30, 1986,⁵ after a court decision had struck down the application of such standards to Norfolk Southern's application.⁶ The Commission found that the proposed acquisition met statutory criteria and the Commission's own standards and, in May 1987, on petitions for rehearing by the Commission, the U.S. Court of Appeals for the D.C. Circuit approved the Commission's authorization for Norfolk Southern to acquire North American.⁷

In July 1987, the U.S. Court of Appeals for the D.C. Circuit reversed and remanded Commission decisions exempting Burlington Northern, Inc.'s (BN) acquisition of six motor carriers through the exemption authority of 49 U.S.C. 11343(e) by holding that such petitions for exemption must be considered under the standards of 49 U.S.C. 10505.⁸ As a result, BN determined to refile under Section 10505 for exemption of these acquisitions. As an added consequence of the court's decision regarding Burlington Northern, Norfolk Southern, North American Van Lines, and Tran-Star Inc., a motor carrier, petitioned to convert their petition for exemption⁹ into a formal application to allow Norfolk Southern and North American to acquire Tran-Star under statutory provisions.¹⁰ A number of other proceedings involving Section 11343(e) versus Section 10505 procedures were held in abeyance following the court's decision as the Commission awaited the applicant's advice as to how it wished to proceed.

In its 1984 decision approving CSX's acquisition of control of American Commercial Lines, Inc. (ACL), the

¹ P.L. No. 99-570.

² *International Brotherhood of Teamsters v. ICC*, 801 F.2d 1423 (D.C. Cir. 1986).

³ *International Brotherhood of Teamsters v. ICC*, 818 F.2d 87 (D.C. Cir. 1987).

⁴ *Regular Common Carrier Conf. v. United States*, No. 85-1601 (D.C. Cir. June 23, 1987).

⁵ No. MC-F-17934, *Norfolk Southern Corp. and North American Van Lines, Inc.—Control—Tran-Star, Inc.* (notice of intent), 52 F.R. 13257 (August 27, 1987).

¹⁰ See 49 U.S.C. 11343-11344.

¹ *Joint Application of CSX Corporation and Sea-Land Corporation Under 49 U.S.C. 11321*, 31 C.C. 2d 512 (1987).

² 49 U.S.C. 11321.

³ Finance Docket No. 31000, *Union Pacific Corporation, et al.—Control—Overnite Transportation Company*, 31 C.C. 2d _____ (1987), served September 23, 1987.

⁴ *Acquisition of Motor Carriers by Railroads*, 11 C.C. 2d 718 (1984).

Commission had imposed reporting and oversight conditions designed to monitor the effects of the acquisition on competition.¹¹ As part of its monitoring activities, one of the Commission's Chief Administrative Law Judges concluded this past fiscal year, in the second of two oversight reports, that competition had not been diminished by the CSX-ACL transaction, and the judge recommended the discontinuance of oversight proceedings.¹² The Commission adopted that recommendation.¹³

The Commission also continued to facilitate intermodal operations by establishing new rules to extend its trailer-on-flatcar and container-on-flatcar (TOFC/COFC) exemption to motor carriers.¹⁴ Such TOFC/COFC service had earlier been exempt only when performed by a rail carrier or by a rail-affiliated motor carrier. The exemption now extends to service by a motor carrier performed as part of a continuous joint rail/motor movement, or when a motor carrier is acting as an agent of a railroad. New highway containers and trailers were also exempted,¹⁵ and the broadened TOFC/COFC exemption was subsequently made applicable to the Alaska Railroad.¹⁶

In a declaratory order,¹⁷ the Commission rejected the interpretation of an earlier decision that Alaskan motor-ocean-motor substituted service was not available to motor contract carriers because they could not participate in joint rates with common carriers.¹⁸ The Commission found that a motor contract carrier in the Alaskan trade may use as substituted service either the joint rate/through route service of a motor common carrier and an ocean common carrier according to tariffs on file with the Interstate Commerce Commission, or an ocean common carrier for the port-to-port segment of such operations through payment to that carrier of the tariff rate it has on file with the Federal Maritime Commission.

The Commission also received a number of petitions last fiscal year for carrier exemptions from statutory standards governing intermodal acquisitions in mergers between manufacturing or other commercial entities having rail and trucking subsidiaries. The Commission acted to minimize regulatory impediment to these non-transportation mergers by holding that the intermodal transportation aspect of such a transaction was a matter of form rather than substance.¹⁹ The Commission thus concluded that an acquisition need not meet the statutory standards of 49 U.S.C. 11344(c) which otherwise must be applied to petitions under 49 U.S.C. 10505 for exemption from those standards.

Other Motor Carriers, 3 I.C.C. 2d ____ (1987), served September 1, 1987.

¹⁷ No. MIC-C-10924, *See-Land Freight Service, Inc. and See-Land Service, Inc.—Alaskan Trade Substituted Service—Petition for Declaratory Order* (not printed), served March 13, 1987.

¹⁸ *Substituted Service—Water—For-Motor Service (Fish-back Service)—Alaskan Trade*, 361 I.C.C. 359 (1978).

¹⁹ *Finance Docket No. 30998, Stone Container Corporation—Control Exemption—Southwest Forest Industries, Inc.* (not printed), served April 1, 1987.

¹¹ Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Lines, Inc.*, 2 I.C.C. 2d 490 (1984), affirmed sub nom., *Crouse Corporation v. ICC*, 781 F.2d 1176 (6th Cir. 1986), cert. denied, 107 S. Ct. 290 (1986).

¹² Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Lines, Inc.* (not printed), served June 8, 1987.

¹³ Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Lines, Inc.* (not printed), served August 7, 1987.

¹⁴ Ex Parte No. 230 (Sub-No. 6), *Improvement of TOFC/COFC Regulation (Railroad-Affiliated Motor Carriers and Other Motor Carriers)*, 3 I.C.C. 2d ____ (1987), served July 22, 1987, app. docketed sub nom., *Central & Southern Motor Freight Tariff Ass'n. v. ICC*, No. 87-8647 (11th Cir. filed August 21, 1987).

¹⁵ *Exemption of New Trailers and Containers*, 3 I.C.C. 2d 751 (1987).

¹⁶ Ex Parte No. 230 (Sub-No. 5), *Improvement of TOFC/COFC Regulation (Railroad-Affiliated Motor Carriers and*

ENERGY AND ENVIRONMENT

Energy and environmental issues associated with Commission actions are addressed by the Section of Energy and Environment within the Commission's Office of Transportation Analysis. The Section of Energy and Environment fulfills its mission and function principally through the preparation of environmental assessments and environmental impact statements. During fiscal year 1987, the number and types of proceedings for which environmental documentation was prepared resembled those of past years and dealt mainly with railroad abandonments, mergers, acquisitions and rail line construction. The Section continued to complete the environmental review process for all proceedings in a timely fashion so that it could appropriately advise the Commission in its decision-making.

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to identify important cultural resources that may be affected by agency action, assess the extent of the effect, and develop measures to avoid or mitigate any adverse effects. Over the past fiscal year, the number of Commission proceedings involving historic preservation issues increased significantly, especially proceedings involving unique and unusual aspects of the historic preservation process. Examples of these more complex issues include the Boston and Maine Corporation's abandonment of its Canal Branch railroad line in Connecticut,¹ the Burlington Northern Railroad Company's abandonment of its rail line from Edgemont to Custer, South Dakota,² and the Consolidated Rail

Corporation's abandonment of a section of line in New Brunswick, New Jersey.³ These proceedings involved flexible and innovative approaches to the historic preservation process on the part of the Section of Energy and Environment and reflect the Section's approach to the implementation of the NHPA in a manner that will both meet the goals of the NHPA and adapt to new and challenging circumstances as they arise.

Proceedings involving implementation of amendments to the National Trails System Act also increased during the past fiscal year. These amendments, codified at 16 U.S.C. 1247(D), give interested parties the opportunity to use for public recreation purposes railroad rights-of-way that have been approved for abandonment while they preserve the same rights-of-way for future railroad use. The Commission's interpretation of these amendments in several rail abandonment proceedings has been the vehicle for successfully establishing a number of recreation trails on former railroad rights-of-way. One of the most comprehensive trails established in this manner and one that includes many cultural and historic resources is a 200-mile Missouri-Kansas-Texas Railroad Company line in Missouri.⁴

One Commission decision which significantly influenced its policy regarding environmental review procedures was a decision involving an abandonment by the Sierra Railroad Company.⁵ In this decision, the Commission stated that in all future railroad

¹ Docket No. AB-32 (Sub-No. 360), Boston and Maine Corporation and Springfield Terminal Railway Company—Abandonment and Discontinuance of Service; Report Implementing Section 106 of the National Historic Preservation Act, served June 15, 1987.

² Docket No. AB-6 (Sub-No. 2930), Burlington Northern Railroad Company—Abandonment—Edgemont to Custer, SD; Environmental Assessment, served July 30, 1987.

³ Docket No. AB-167 (Sub-No. 1085X), Consolidated Rail Corporation—Exemption Abandonment in Middlesex County, NJ, served September 11, 1987.

⁴ Docket No. AB-102 (Sub-No. 13), Missouri-Kansas-Texas Railroad Company—Abandonment—Machens to Sedalia, MO; Report Implementing Section 106 of the National Historic Preservation Act, served December 24, 1986.

⁵ Docket No. AB-226X, S.R. Investors, Ltd. Doing Business as Sierra Railroad Company—Abandonment—in Tuolumne County, CA, served July 20, 1987.

abandonment exemptions railroads will be required to file environmental reports. Up until the time this decision was issued, environmental reports complying with Commission regulations at 49 C.F.R. 1105.7 were required only in regulated abandonment proceedings.

Just as the environmental review process has evolved in several important aspects during the past fiscal year as indicated by the actions described above, the Commission currently is in

the process of re-examining its environmental review procedures. This re-examination is the result of a rulemaking, proposed in fiscal year 1987, dealing with the Commission's policy on class exemptions for rail construction which announced the ICC's plans to undertake a review of its environmental review process and procedures.⁶

⁶ Ex Parte No. 392 (Sub-No. 3), *Class Exemption for Rail Construction Under 49 U.S.C. 10901*, served May 29, 1987.

TARIFFS

Common carrier freight tariff filings in fiscal year 1987 decreased slightly to 1.4 million from the record filings of nearly 1.5 million established in fiscal year 1986. The continued receipt of tariffs at such a high level indicates the intensity of competition brought about by deregulatory legislative actions begun in 1980.

Of the total number of tariff filings, motor carrier and railroad tariff receipts remained constant at 1.1 million and 78,000, respectively, while international ocean/land intermodal filings and freight forwarder filings decreased dramatically. No rail passenger tariffs were filed during the period, and only one water passenger tariff was filed. Motor passenger tariff filings numbering 2,438 for fiscal year 1987 reflect a slight increase over the previous fiscal year.

Railroad contract filings numbering approximately 30,000 for fiscal year 1987 represent an increase of 14 percent over the filings of the previous fiscal year and reflect the continuing choice of rail contracts as a pricing alternative to tariffs.

Informal Rate Cases

The Commission's Bureau of Traffic used its informal procedures to settle 5,597 cases concerning disputes over rate and tariff matters during the last fiscal year. This simple and inexpensive process permitted the settlement of most disputes without the need for the institution of time-consuming and costly formal procedures. Many of the disputes involved freight bill claims by auditors and collection agencies for alleged improperly underpaid freight bills of bankrupt motor carriers and freight forwarders. The Bureau was successful in showing that many of the claims were not properly supported and, consequently, improper claims against shipper/receivers of freight were withdrawn.

Every person or group, from large corporations to small consumers, has

an opportunity to take part in the informal rate-settlement process, and each receives the same expert assistance that is provided by staff to the Commission in formal rate and tariff matters. A further public gain from informal settlements is the dissemination of a knowledge of pertinent law, of tariffs, and of each party's rights to prevent the future occurrence of similar disputes.

The Commission's special docket procedure permits rail and water carriers to seek authority to refund or waive the collection of admittedly unreasonable charges. A total of 480 special docket cases were processed authorizing reparations and waivers amounting to \$7,470,457. The largest single adjustment was \$1,083,451.

Revised rules were adopted during fiscal year 1987 which reduced the amount of paperwork required for special docket cases involving amounts of \$25,000 or less.¹ This revision has benefited carriers, shippers, and receivers alike, and has increased the efficiency of Commission staff, as well.

Through the Commission's informal complaint proceedings, rail or water shippers may prevent expiration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and describing their complaints. If the carrier in question agrees that a particular movement involves overcharges or that charges are unreasonable, refunds or waivers may be made without the need for formal procedures. The ICC processed 13 such cases on the informal complaint docket during the past fiscal year.

Suspension/Special Permission Board

The Suspension/Special Permission Board is an employee board es-

¹ Docket No. 37130 (Sub-No. 4), Special Docket Proceedings—Exemption From Letter of Intent Requirements Involving Amounts of \$25,000 or Less, 3 I.C.C. 2d 898 (issued July 14, 1987).

established by the Commission to act initially for the Commission on matters involving carrier tariffs, rules, rates, and charges.

Matters of suspension involve new or revised rates, charges, or rule provisions that are filed with the Commission in tariff form and concern the interstate transportation services provided by the nation's rail, motor, and domestic water carrier industries. Upon the request of interested or affected parties, proposed tariff changes are considered for possible investigation and/or suspension by the Suspension/Special Permission Board, or by the entire Commission. Decisions of the Board are subject to reconsideration by the Commission.

During fiscal year 1987, 49 tariff proposals were protested; 13 were suspended; 26 were permitted to become effective; one was allowed to become effective but was investigated; and nine were either canceled by the proposing carrier, had their protests withdrawn, or were rejected by the Commission. There were seven unprotested proposals considered by the Board on its own initiative. Of these proposals, one was suspended; three were permitted to become effective; and three were canceled by the proposing carrier.

Among the proposals considered were 17 general increases in, or restructurings of, motor common carrier rates and charges filed by regional motor carrier bureaus,² and two gen-

eral increases in rates and charges applicable on household goods shipments.³

Special permission matters involve applications requesting relief from the Commission's tariff-filing regulations. During fiscal year 1987, the Board considered 319 such applications. Of those, 304 were granted, one was denied, and 14 were withdrawn or returned to the applicant before being decided. As a result of the Commission's modification of procedural rules to encourage pricing innovation, as well as tariff simplification,⁴ the number of applications considered by the Commission in fiscal year 1987 represented a considerable decline from that of fiscal year 1986. The Board's decisions in this area benefited the public through reductions in costs and paperwork, more simplified tariffs, more efficient use of carrier equipment, and the implementation of innovative pricing plans.

Through Board action and the Commission's concurrence, several special permission applications were granted allowing intermodal carriers to publish rate changes on short (less than statutorily required) notice.⁵ These actions allowed shippers and carriers to negotiate and publish rates without delay to meet the needs of the marketplace.

²For Tariff Bureau, Inc.; Pacific Inland Tariff Bureau; Rocky Mountain Motor Tariff Bureau, Inc.; and Southern Motor Carriers Rate Conference, Inc.

³Household Goods Carriers' Bureau.

⁴No. 37321, Revision of Tariff Regulations, All Carriers, served October 1, 1984.

⁵Special Tariff Authority No. 87-183, Special Tariff Authority No. 87-206, Special Tariff Authority No. 87-256, Special Tariff Authority No. 87-283.

¹Central & Southern Motor Freight Tariff Association, Incorporated; Central States Motor Freight Bureau, Inc.; The Eastern Central Motor Carriers Association, Inc.; Middle Atlantic Conference; Midwest Motor Freight Bureau; The New England Motor Rate Bureau, Inc.; Niagara Fron-



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ENFORCEMENT

During fiscal year 1987, the Commission continued to direct its enforcement efforts to coincide with the trend toward reliance on marketplace solutions, rather than regulatory interventions, relative to compliance issues. The Commission's enforcement activities thus were concentrated in those areas in which competition had in some way been lessened, or where assistance was given to parties lacking the resources and leverage needed to independently achieve compliance with the Interstate Commerce Act and the Commission's regulations. Particular enforcement emphasis was also placed upon safe and financially responsible motor carrier operations. The following discussion of the Commission's enforcement program during the past fiscal year groups pertinent cases under three violation categories: (1) consumer and small business protection; (2) fraudulent activity; and (3) unsafe and uninsured operations. The Commission sought and obtained a large number of consent agreements and court-approved injunctions in fiscal year 1987 to ensure future compliance with provisions of both the Interstate Commerce Act and the ICC's regulations, and a total of \$846,771 was collected in penalties.

Consumer and Small Business Protection

Included within this program area are cases involving violations of household goods carrier regulations, owner-operator abuses, and violations of the Commission's duplicate-payment regulations.

In June 1987, the Labrador Moving Co., Inc., doing business as Florida Eastern U.S. Van Lines of Palmyra, New Jersey, was permanently enjoined from violating the Commission's household goods regulations and from continuing to operate in interstate commerce after that carrier's authority had been revoked due to the lack of neces-

sary insurance coverage.¹ The injunction obtained by the ICC in this case also required that, in the event operating authority was reinstated, Labrador would have to: (1) acknowledge and process claims within the time limits established by the Commission's loss and damage regulations; (2) relinquish possession of household goods shipments moving under non-binding estimates upon payment of 110 percent of each estimate; and (3) pay claims within 14 days after agreeing to pay them or after receiving claimant acceptance of a firm compromise settlement offer.

In another case, B-Right Trucking Co. (B-Right) of Youngstown, Ohio, signed an agreement of settlement with the Commission in which B-Right agreed to comply with the Commission's leasing regulations regarding payment of escrow funds to owner-operators within 45 days of termination of lease agreements, and to deduct from owner-operator compensation only those charges specified in the lease. B-Right agreed to pay out all escrow funds still held for owner-operators who had terminated agreements with it, and also agreed to reimburse owner-operators for all monies unlawfully deducted by B-Right as weekly service charges.

Another case concerning owner-operator problems that was resolved last fiscal year involved Sicomac Carriers, Inc., of Parsippany, New Jersey. The result was that Sicomac signed an agreement of settlement in which it agreed to charge lessors only for items specified in its written lease, and to reimburse lessors for unauthorized deductions relating to insurance coverage.

In another case involving owner-operator abuse, Central California

¹ *Interstate Commerce Commission v. Labrador Moving Co., Inc., doing business as Florida Eastern U.S. Van Lines*, Civ. No. 87-1640 (E.D. Pa., June 11, 1987).



Trucking, Inc., of Keyes, California, entered into a settlement agreement resolving its failure appropriately to compute and make remittances to its owner operators at the level of compensation required by its leases. This carrier agreed to modify its procedures to insure that in the future owner-operators would be paid the agreed compensation. The carrier also conducted an audit of its previous settlements and made restitution to its underpaid owner-operators. It also paid a \$2,000 civil penalty for the past violations.

In June 1987, Admiral Merchants Motor Freight, Inc., was enjoined from committing further violations of the Commission's regulations regarding overcharges and loss-and-damage and insurance claims, duplicate payments, and equipment leasing.² The Commission had contended in this case that Admiral's plan to pay only 20 percent of each claim it received violated the Commission's regulations as well as the Interstate Commerce Act.

An injunction was obtained against A&E Enterprises, Inc., in March 1987 which prohibited that carrier from refusing to deliver shipments on which all applicable freight or warehouse charges had not been paid or legally guaranteed.³ The Commission successfully argued that A&E could not withhold delivery of a shipment until the broker who arranged the shipment paid balances due the carrier on prior shipments.

In another area, P-I-E Nationwide, Inc., formerly Ryder Trucklines, Inc., of Jacksonville, Florida, delivered to the Commission certified checks totaling \$812,495 in final payments of a civil forfeiture settlement resulting from Ryder's extensive retention of duplicate payments from shippers. As part

of the settlement, Ryder previously had refunded over \$3 million to over 17,000 Ryder shippers and had paid \$1 million in civil forfeiture penalties.

Fraudulent Activity

Included within the category of fraudulent practices are cases involving schemes to defraud motor carriers as well as cases involving violations of ethical standards governing the conduct of attorneys and practitioners who represent clients before the Commission.

The Commission continued to uncover instances during the past fiscal year where attorneys or practitioners had accepted payment from clients for the filing of applications with the Commission without having actually made the appropriate filings. For example, on September 9, 1987, the Supreme Court of Georgia disbarred Mark S. Gray from the practice of law in the State of Georgia because he was retained by clients in the trucking industry to file applications with the Commission and he had failed to do so.⁴ The court found that in each of the cases Mr. Gray had failed to notify his client that he was not going to pursue the matter for which he had been retained; that he did not earn the fee given to him and did not promptly refund the unearned portion of his fee; and that he neither incurred costs on behalf of his clients, nor maintained a complete record of his clients' funds, nor properly rendered an accounting to his clients. Other instances involving similar fraud and related conflicts of interest were under Commission investigation at the close of the fiscal year.

The Commission additionally participated in several criminal investigations involving transportation issues which resulted in convictions under fraud and tax evasion statutes. On September 18, 1987, Charles Nathan

² *Interstate Commerce Commission v. Admiral Merchants Motor Freight, Inc.*, Civ. No. 87-5347 (D. Minn., June 24, 1987).

³ *Interstate Commerce Commission v. A&E Enterprises, Inc.*, Civ. No. 4-86-403-K (N.D. Tex., March 6, 1987).

⁴ *In the Matter of Mark S. Gray*, Disciplinary Nos. 536, 537, 543 (Supreme Court of Ga., September 9, 1987).



Ammerman, doing business as A&A Brokers, Inc., of Liberty, North Carolina, and Delbert J. Heyman, doing business as DJH, Inc., of Sophia, North Carolina, were both found guilty of one count each of conspiring to violate the wire fraud statutes, and 39 counts each of scheming to defraud various regulated motor carriers of their freight charges for transporting interstate shipments of freight.⁶ The Commission found that some 500 motor carriers had lost more than \$800,000 in freight charges because of the actions of these individuals.

On September 21, 1987, Charles Nathan Ammerman and Wayne Gilbey, an assistant traffic manager for Coronado Paint Company of Edgewater, Florida, pleaded guilty to one count each of conspiring to violate the wire fraud statutes and one count each of scheming to defraud Coronado Paint Company of its freight charges for transportation of interstate shipments of regulated freight.⁶ Ammerman had converted the freight charges due Coronado to his own use and had paid secret commissions to Gilbey to continue to have Coronado's vehicles transport shipments for Ammerman.

As a result of a Commission investigation into illegal kickbacks, Howard B. Shore of Hopkinton, Massachusetts, pleaded guilty to one count of subscribing a false income tax return.⁷ While employed as the Traffic Manager and Purchasing Agent of Teknor Apex Co., Shore had received substantial amounts of money in the form of kickbacks from Southern Express Corp., a licensed contract carrier. This money,

which was not reported by Shore on his income tax returns, was paid to influence Shore to tender Teknor Apex interstate freight to Southern Express.

Unsafe or Uninsured Operations

All motor carriers seeking operating authority from the Commission must establish that they are fit to conduct the proposed operations and are willing to conform to statutory and administrative requirements, including Federal Motor Carrier Safety Regulations. Safety fitness is a primary concern of the Commission. When a motor carrier files an application for either temporary or permanent operating authority, its safety rating is verified with the U.S. Department of Transportation (DOT). Each applicant for authority who has an "unsatisfactory" rating must file an affidavit offering either evidence of an improved safety rating, or compelling reasons why authority should be issued despite the existence of an "unsatisfactory" rating.

Applicants with "conditional" safety ratings are examined on a case-by-case basis and, if no cause is found to consider further the issue of an applicant's safety fitness, ICC authority generally is granted but limited to a one-year term. At the end of that period, a carrier may seek review of its status or may even obtain relief at an earlier time should a DOT re-audit show a "satisfactory" safety rating.

The Commission also uses its powers to issue cease-and-desist orders, as well as suspensions and revocations of authority where motor carriers have demonstrated a continuing failure to comply with Federal motor carrier safety regulations.⁸ In February 1987, the Commission suspended the operating authority of J&J Bus Service, Inc., of Brandywine, Maryland, until it is assigned an improved safety rating

⁶ *United States v. Charles Nathan Ammerman*, Cr. No. 87-71-01-G (M.D. N.C., September 18, 1987); *United States v. Delbert J. Heyman*, Cr. No. 87-71-02-G (M.D. N.C., September 18, 1987).

⁷ *United States v. Charles Nathan Ammerman*, Cr. No. 87-70-01-G, (M.D. N.C., September 21, 1987); *United States v. Wayne Gilbey*, Cr. No. 87-70-02-G (M.D. N.C., September 21, 1987).

⁸ *United States v. Howard B. Shore*, Cr. No. 87-87-018 (D. R.I., April 14, 1987).

⁸ 49 U.S.C. §10925.

by the DOT.⁹ In a similar case involving the Gersman Produce Co., Ltd., a property carrier with a background of serious safety violations, the Commission also issued a cease-and-desist order.¹⁰ In September 1987, the Commission issued another cease-and-desist order against Mercer Bros. Trucking Co.¹¹

The Commission's insurance compliance program emphasizes the use of consent agreements to cure insurance deficiencies. The Commission's

regulations specify minimum insurance levels for various types of carriers and, when coverage expires or is canceled, the Commission's field staff conducts an investigation. The Commission then seeks voluntary compliance through consent agreements by which involved carriers agree not to operate until they have obtained appropriate insurance coverage. During fiscal year 1987, the Commission obtained 2,072 consent agreements in insurance cases. The Commission occasionally will take stronger enforcement action for lack of insurance where carriers fail or refuse to obtain prescribed insurance, and such actions would primarily include the filing of injunction complaints in Federal District Court. During the past fiscal year, 38 such injunctions were obtained against carriers lacking adequate insurance.

⁹ No. MC-C-30001, J&J Bus Service, Inc.—Investigation and Revocation of Certificate (not printed), served February 27, 1987.

¹⁰ No. MC-C-10998, Gersman Produce Co., Ltd.—Investigation and Revocation of Certificate (not printed), served March 18, 1987.

¹¹ No. MC-C-30037, Mercer Bros. Trucking Co.—Investigation and Revocation of Certificate (not printed), served September 29, 1987.

FINANCIAL OVERSIGHT

The Commission's financial oversight activities include accounting and reporting, financial analysis, cost analysis, cost development, and auditing. These functions involve the preparation, amendment, and interpretation of prescribed accounting and financial reporting rules, the examination and analysis of accounts and financial statements, the analysis of cost and financial evidence submitted by parties to proceedings before the Commission, and the compilation and publication of transportation statistics and cost studies.

Accounting and Reporting Rulemaking

The Commission's prescribed accounting and reporting systems are continually reviewed to provide current useful information. This review program includes updating to correspond with generally accepted accounting principles (GAAP), and to reduce reporting burdens while retaining those requirements which provide data needed by the Commission.

During fiscal year 1987, the Commission decided to reduce significantly the accounting and reporting requirements for property¹ and passenger motor carriers.² The accounting systems for both of these carrier types were set aside to be used as references only, and not prescribed, thereby allowing motor carriers to use generally accepted accounting principles. Report forms for passenger carriers were downsized significantly to reduce reporting burden and costs, but some petitioners, such as the American Trucking Associations, and others, requested and received a stay of a Commission decision to reduce the report-

ing burden for property carriers.³ These petitioners wanted increased reporting data items and accounting and reporting prescription for Class II motor carriers. This matter is currently under consideration by the Commission.

The Commission proposed to revise the classification limits for determining the reporting classes for accounting and reporting for motor carriers of passengers during the past fiscal year. As proposed, Class I bus carriers would be classified as those whose annual operating revenues are \$5 million or more, instead of the former \$3 million level, and that limit would be indexed each year to offset inflationary effects. This proposed change would eliminate the reporting burden of about 11 passenger carriers.⁴

The Commission additionally decided to consider a proposal which would require each Class I railroad to have an independent public accountant review each road and equipment depreciation study prepared by the railroad for submission to the Commission.⁵ This independent public accountant would prepare and submit to the Commission on the railroad's behalf a report which addresses whether the railroad's study was undertaken in conformance with the Commission's regulations and instructions.

Cost and Financial Analysis

The Commission analyzed cost and financial evidence submitted by railroads and other entities in fiscal year 1987 in connection with rates charged for the transportation of coal and other bulk commodities. In one such proceeding involving the first application of the Commission's Coal Rate Guide-

¹ Docket No. 38904, *Elimination of Accounting and Reporting Requirements for Motor Carriers of Property*, _____ I.C.C. 2d _____, served March 31, 1987.

² Docket No. 38953, *Elimination of Accounting and Reporting Requirements for Motor Carriers of Passengers*, _____ I.C.C. 2d _____, served May 29, 1987.

³ Docket No. 38904, *Elimination of Accounting and Reporting Requirements for Motor Carriers of Property*, served May 4, 1987.

⁴ Docket No. 38953 (Sub-No. 1), *Revision to the Accounting and Reporting Requirements for Motor Carriers of Passengers* (not printed), served August 3, 1987.

⁵ Ex Parte No. 488, *Review of Railroad Depreciation Studies by Independent Public Accountants* (not printed), served February 25, 1987.



lines,⁸ the Commission reaffirmed on appeal that a coal shipper was charged transportation rates which exceeded a maximum reasonable level, and the resultant reparations amounted to approximately \$18 million.⁷

In another area, the Commission expanded its proceeding to establish guidelines to assess maximum rate reasonableness on captive non-coal and small coal rail traffic by seeking comments on alternative simplified methodologies for judging reasonableness.⁹ The Commission had previously sought comments on the feasibility of applying the principles of constrained market pricing (the analytical framework used to assess the reasonableness of captive coal rates) to captive non-coal and small coal shipments.⁹

The Commission also requested comments in two separate proceedings in which it made tentative findings based upon application of individual proposed maximum rate reasonableness guidelines tests. In one proceeding, the Commission found that rates above specified revenue-to-variable cost ratios, determined through costing of waybill data, were unreasonable.¹⁰ In a second proceeding, the Commission found that the benchmark for determining maximum reasonable rate levels is the formula replacement cost level.¹¹

During the fiscal year, the Commission determined that the railroad industry's 1985 and 1986 cost of capital rates were 13.6 percent and 11.7 per-

cent, respectively.¹² The Commission also established procedures to expedite its future decisions of annual determinations of the railroad industry's cost of capital, and these revised procedures will ensure that a cost of capital determination decision will be served by June 30 of the year following that for which a determination is being made.¹³

The Commission also determined that none of the nation's Class I railroads were revenue adequate in 1985 and 1986 since their individual rates of returns on net investment in transportation property were less than the cost of capital determined for the industry for the respective years.¹⁴ Those revenue adequacy findings were made on the basis of modifications to the Commission's standard which were adopted during this fiscal year and which changed the manner in which railroad return on investment is calculated.¹⁵ These revisions included the use of ratable depreciation accounting data, instead of retirement-replacement-betterment accounting data, and the subtraction of accumulated deferred taxes from the net investment base.

Throughout fiscal year 1987, the Commission analyzed cost and financial evidence submitted in connection with railroad applications to abandon selected line segments. These analyses took into account the avoidable loss or gain which would result from each abandonment through the determination of applicable revenues and avoidable costs.¹⁶

⁸ Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines—Nationwide*, 1 I.C.C. 2d 520 (1985).

⁷ Docket No. 38783, *Omaha Public Power District v. Burlington Northern Railroad Company*, ____ I.C.C. 2d ____, served May 28, 1987.

⁹ Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings* (not printed), served April 8, 1987.

¹⁰ Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings* (not printed), served May 21, 1986.

¹¹ Docket No. 37809, *McCarty Farms, et al. v. Burlington Northern Inc.*, ____ I.C.C. 2d ____, served May 27, 1987.

¹² Docket No. 40073, *Southwest Railroad Car Parts Co. v. Missouri Pacific Railroad Co.* (not printed), served July 10, 1987.

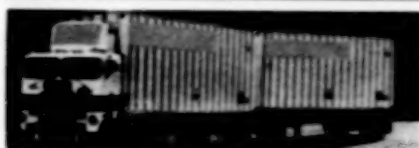
¹³ Ex Parte No. 464, *Railroad Cost of Capital—1985*, ____ I.C.C. 2d ____, served March 18, 1987, and Ex Parte No. 466, *Railroad Cost of Capital—1986*, ____ I.C.C. 2d ____, served August 21, 1987.

¹⁴ Ex Parte No. 466 (Sub-No. 1), *Railroad Cost of Capital—Proposed Expedited Procedure*, ____ I.C.C. 2d ____, served July 1, 1987.

¹⁵ Ex Parte No. 465, *Railroad Revenue Adequacy—1985 Determination* (not printed), served March 18, 1987, and Ex Parte No. 472, *Railroad Revenue Adequacy—1986 Determination*, ____ I.C.C. 2d ____, served August 21, 1987.

¹⁶ Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy*, ____ I.C.C. 2d ____, served December 31, 1986.

¹⁷ Ex Parte No. 274, *Revisions of Abandonment Regulations*, 49 C.F.R. 1152, effective January 3, 1984.



The Commission was also engaged in the analysis of cost and financial evidence submitted in connection with motor carrier requests for general rate increases. These analyses included assessments of the revenue needed to cover operating costs and to provide a fair and reasonable return on invested capital. The Commission suspended two such rate-increase proposals anticipated to generate approximately \$60 million in additional shipping charges.¹⁷ Each of the suspended proposals was subsequently withdrawn by the initiating motor carrier tariff bureau.

Analyses were also conducted by the Commission on financial data included in the numerous applications filed during the past fiscal year by motor carriers of property and passengers requesting approval for self-insurance for bodily injury and property damage claims and/or cargo claims. For each application, the Commission evaluated whether the applicant had the financial resources to fund its proposed self-insurance program and determined either to (1) request additional data, (2) approve the self-insurance application with the inclusion of conditions or restrictions to assure the availability of sufficient resources to pay claims for the statutory minimum amount of coverage, or (3) deny the application.

The Commission continued to evaluate, as well, the financial condition of large transportation companies to determine whether they were financially able to provide adequate service to shippers. Reports were publicly released each quarter which contained the latest quarter and twelve-month earnings, traffic volume, and rate of return data of Class I railroads, 100 of the nation's largest trucking compa-

nies, 15 of the largest household goods carriers, and 10 of the largest bus companies.

Cost Development

During fiscal year 1987, the Commission issued a decision which provided that future maximum Rail Cost Adjustment Factor (RCAF) rate levels would rise and fall with the level of the quarterly RCAF as soon as a bank of credits established to hold down rates was exhausted.¹⁸ The bank of credits was established and rate rollbacks were ordered to correct for prior overstatements in maximum RCAF cost levels. Four quarterly RCAF decisions were also issued as part of the Commission's general increase procedures.

The Staggers Rail Act of 1980 requires the Commission to calculate an annual Cost Recovery Percentage (CRP) which serves as the threshold for Commission regulation of market-dominant rail traffic if that CRP falls between 170 percent and 180 percent. The Commission issued a decision retaining the calculation in use for both 1985 and 1986, and the comments received in a pertinent proceeding supported continued use of that calculation.¹⁹ The threshold currently remains unchanged at 180 percent.

The Commission continued to hold in abeyance during the past fiscal year the adoption of the Uniform Railroad Costing System (URCS) pending its review by the Railroad Accounting Principles Board (RAPB).²⁰ The RAPB was established by the Staggers Act, but legislation funding the RAPB was not passed until 1984. During the year, the Commission provided technical and analytical support to assist the RAPB in its review of the URCS, and

¹⁷ Investigation and Suspension Docket No. M-30398, General Increase, RMB, April 1, 1987, served March 31, 1987; and Investigation and Suspension Docket No. M-30401, General Increase in Joint-Line Class Rates, RMMTB, served July 24, 1987.

¹⁸ Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures (not printed), served October 17, 1986.

¹⁹ Ex Parte No. 399, Cost Recovery Percentage (not printed), served December 31, 1986.

²⁰ Ex Parte No. 43, Adoption of Uniform Rail Costing System for Determining Variable Costs for Jurisdictional Threshold and Surcharge Purposes (not printed), served November 13, 1984.

one of the recommendations in the RAPB's final report on the URCS, issued in September 1987, was that the Commission review the variability study underlying the URCS prior to its adoption. It is expected that this review and the subsequent rulemaking will take about 18 months to complete.

In one other area of cost development, the Commission continued to monitor nationwide diesel fuel prices and, upon request, provided weekly summaries of price data to the public.

Directed Service

On September 26, 1979, the Commission concluded that the Rock Island Railroad had exhausted all of its operating funds, and directed the Kansas City Terminal Railway Company (KCT) to operate over the entire Rock Island system, beginning October 5, 1979. This directed-service authority, which expired on March 23, 1980, was the only Commission involvement in such a large and complex directed-service operation. All further directed-service accounting operations were terminated on March 31, 1983, according to a Commission order.²¹ Of a total directed-service appropriation of \$91.1 million, \$88.9 million had been disbursed to the KCT by the federal government. As of September 30, 1987, there were no appropriated funds available for directed service operations.

Subsequent to the March 1980 termination of directed service, and with advice from the U.S. Department of Transportation, the Commission authorized 24 railroads to operate Rock Island line segments without government funding. Consequently, a substantial portion of Rock Island service

was continued. A number of railroads expressed an interest in purchasing Rock Island lines which they were operating, and some lines were acquired. The ICC also permitted the State of South Dakota and three railroads to rehabilitate certain trackage segments. Federal subsidies totaled approximately \$5.4 million for the rehabilitation, of which \$2.4 million were disbursed to South Dakota and \$3 million to the three railroads.

Auditing

Each Class I railroad is required to submit a report from an independent public accountant stating that specified data in the railroad's "R-1" Annual Report of finances and operations have been examined, using agreed-upon procedures, and have been found in compliance with the Uniform System of Accounts for Railroad Companies.²² The R-1 report is also required to present any material exceptions which may have come to the attention of the accountant during the examination. During fiscal year 1987, the Commission's audit staff reviewed the working papers of a number of independent public accountants for correctness and compliance.

The Commission's audit staff also investigated transactions between railroads and affiliated companies to determine the impact of such transactions on the railroads' financial conditions. The audit staff additionally performed its annual internal audit of the Commission's fiscal operation and reviewed the internal controls in place to determine ICC compliance with the Federal Managers Financial Integrity Act of 1982.²³

²¹ Directed Service Order No. 1388, Kansas City Term. Ry. Co.—Operation—Chicago, R.I.&P (not printed), served December 9, 1981.

²² Ex Parte No. 480, Certification of Railroad Annual Report R-1 By Independent Accountants, _____ I.C.C. 2d _____, served October 11, 1985.

²³ P.L. 97-255.

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COURT ACTIONS



The Commission's litigation during the past fiscal year continued to focus on implementation of the Staggers Rail Act of 1980, the Motor Carrier Act of 1980, and the Bus Regulatory Reform Act of 1982. Recent court decisions have largely upheld the Commission's interpretation of these statutes. The courts' affirmation of Commission policies and regulatory initiatives should have a significant impact on the operations of the nation's surface transportation industries.

During fiscal year 1987, the Office of the General Counsel handled 602 cases in the Federal courts. Of these, 483 were pending at the beginning of the fiscal year and 119 additional cases were instituted during the year. As of September 30, 1987, 311 cases have been concluded, leaving 291 pending in various stages of litigation. Of the cases concluded, 20 were done so by the Supreme Court, 282 by the Federal Courts of Appeals and nine by the Federal District Courts. The more significant of these decisions are discussed and analyzed below.¹

In the railroad carrier area, the U.S. Court of Appeals for the District of Columbia Circuit summarily affirmed a Commission decision² in which the Commission exempted from regulatory approval most transactions under 49 U.S.C. 10901.³ This provision governs most transactions involving the transfer of operations from trunk line rail carriers to new short line carriers.

The Commission's policy not to impose labor-protective conditions to this class of rail transactions without a

substantial showing of necessity has engendered much litigation. However, the Commission's decisions in this area have, with few exceptions, been upheld by the courts.⁴ Similarly, the courts have upheld the Commission's determination as to the kind of labor-protective conditions that should be imposed in particular transactions.⁵

Also in the rail carrier area, the Supreme Court,⁶ by its denial of a petition for certiorari, left standing the Commission's determination in the sale of the core properties of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee Road) to the Soo Line Railroad Company. The Commission found that the Soo Line's bid for the Milwaukee Road was preferable to the Chicago and North Western Transportation Company's monetary higher bid. After the District Court⁷ overseeing the Milwaukee Road's reorganization adopted the Commission's decision⁸ and the Seventh Circuit affirmed the sale,⁹ the appellants unsuccessfully petitioned the Supreme Court for certiorari.

Another Supreme Court decision¹⁰ involving the Commission¹¹ will

¹ See, for example, *M.M. Winter v. ICC* No. 86-1704 (8th Cir. September 18, 1987); *Simmons v. ICC*, No. 87-1421 (D.C. Cir. September 18, 1987); *RLEA v. ICC*, 819 F.2d 1172 (D.C. Cir. 1987); *CMC Real Estate Corp. v. ICC*, 807 F.2d 1025 (D.C. Cir. 1986).

² *Brotherhood of Locomotive Engineers and UTU v. ICC*, 808 F.2d 1570 (D.C. Cir. 1987).

³ *Chicago, Milwaukee, St. Paul and Pacific Railroad Co. v. U.S.*, 107 S.Ct. 2480 (1987).

⁴ *In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, Debtor (unpublished) No. 778 8999 (N.D. Ill. February 18, 1986).

⁵ Finance Docket No. 29540 (Sub-No. 9) *Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Reorganization—Acquisition by Grand Truck Corporation, et al.* (Served September 1, 1984 and February 8, 1985).

⁶ *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, Debtor, 758 F.2d 508 (7th Cir. 1985).

⁷ *ICC v. Brotherhood of Locomotive Engineers*, 107 S.Ct. 2360 (1987).

⁸ Finance Docket No. 30000 (Sub-No. 18), *Danner and Rio Grande Western Railroad Company—Package Rights—Missouri Pacific Railroad Company—Between Pueblo, CO and Kansas City, MO*; Finance Docket No. 30000 (Sub-No. 25), *Missouri—Kansas—Texas Railroad Company—Package Rights—Missouri Pacific Railroad Company—Between Kansas City, KS and Omaha, NE*.

¹ Some of the litigation involved non-transportation matters such as Equal Employment Opportunity Act complaints, government contract matters, and Freedom of Information Act appeals. Because these cases have no direct impact on the development of transportation regulatory law and were not of any broad significance otherwise, they are not discussed here.

² *Ex Parte* No. 392 (Sub-No. 1), *Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 (1986).

³ *Whole Commerce Commission v. Interstate Commerce Commission*, 817 F.2d 145 (D.C. Cir. 1987).



have a substantial impact on the Commission's consideration of petitions to reopen administrative proceedings. The Commission's position that all reasonably feasible objections to a proposed railroad consolidation must be raised before the Commission and on judicial review of a Commission decision within 60 days of that decision being final, or be deemed to have been waived, was upheld by the Court. In addition, strong support¹² was given by the Court to the Commission view that the Section 11341(a) exemption from all other laws is self-executing.¹³

Finally, the D.C. Circuit¹⁴ handed down a significant decision affirming a Commission decision¹⁵ not to disregard the separate corporate identity of a subsidiary set up to acquire a line of railroad. The Commission granted an exemption from 49 U.S.C. 10901 to allow a new entity, which was a wholly owned subsidiary of a rail carrier, to purchase a rail line. The Court held that the Commission was not required to treat the rail carrier and its wholly owned subsidiary as one and the same entity and, accordingly, that the transaction need not be governed by 49 U.S.C. 11343 under which labor-protective conditions are mandatory.

In several decisions, the courts reviewed the Commission's active encouragement of intermodal surface transportation activities. The focal point of the D.C. Circuit's review of the acquisition of North American Van Lines, Inc. (NAVL) by the Norfolk Southern Corporation (NS) was the Commission's reinterpretation of the 49 U.S.C. 11344(c) standards for assessing railroad acquisitions of motor

carriers.¹⁶ The Commission determined¹⁷ that a railroad acquiring a motor carrier need only demonstrate that it would use the motor carrier to public advantage in its overall "transportation activities" to obtain approval without purchase restrictions. NS's acquisition of NAVL was approved under this new interpretation.¹⁸ The D.C. Circuit initially concluded that the Commission's reinterpretation of the statute was contrary to Congressional intent, and the ICC's initial approval of the NS acquisition of NAVL was therefore remanded to the Commission.¹⁹ However, Congress quickly enacted a statute²⁰ adopting the Commission's reinterpretation of 49 U.S.C. 11344(c) for rail acquisitions of motor carriers occurring during a limited two-year period. In light of this Congressional action, the D.C. Circuit on rehearing affirmed the Commission's approval of the NS acquisition of NAVL.²¹

In another intermodal decision, the D.C. Circuit court reversed and remanded²² Commission decisions exempting Burlington Northern Inc.'s acquisition of six trucking companies under 49 U.S.C. 11343(e).²³ The court held that rail-motor acquisitions can only be exempted under Section 10505, and this holding effectively requires a full merits inquiry (at least with

¹² Ex Parte No. 436, *Acquisition of Motor Carriers by Railroads*, 1 I.C.C. 2d 718 (1984).

¹³ *Id.* at 727.

¹⁴ Finance Docket No. 30500, *Norfolk Southern Corp.—Control—North American Van Lines*, 1 I.C.C. 2d 842 (1985).

¹⁵ *International Brotherhood of Teamsters v. ICC*, 801 F.2d 1423 (D.C. Cir. 1986).

¹⁶ *Anti-Drug Abuse Act of 1988*, Pub. L. No. 99-570, §3403, 100 Stat. 3207 (1988).

¹⁷ *International Brotherhood of Teamsters v. ICC*, 818 F.2d 87 (D.C. Cir. 1987).

¹⁸ *Regular Common Carrier Conference v. United States*, 820 F.2d 1323 (D.C. Cir. 1987).

¹⁹ No. MC-F-16248, *Burlington Northern, Inc.—Control Exemption—Victory Freightway System, Inc.*, July 26, 1985; No. MC-F-16372, *Burlington Northern—Control Exemption—Monroe Company, Inc.* and No. MC-F-16452, *Burlington Northern—Control Exemption—Monroe Trucking, Inc.*, February 13, 1986; No. MC-F-17030, *Burlington Northern, Inc. and Burlington Northern Motor Carriers, Inc.—Control Exemption—Scoop Express, Inc., Whiggle Trucking Co. and Taylor-Mall Therap, Inc.*, July 21, 1986.

¹² Concurring opinion by Justice Stevens joined by Justices Marshall, Brennan and Blackmun, 107 S.Ct. 2369 at 3329.

¹³ *Id.*

¹⁴ *ALEA v. ICC*, 819 F.2d 1172 (D.C. Cir. 1987).

¹⁵ Finance Docket No. 30779, *Rochester & Southern Railroad, Inc. and Genesee & Wyoming Industries, Inc.—Exemption from 49 U.S.C. 10301, 11301 and 11343*, served June 27, 1988.



respect to the particular findings required by Section 11344(c)²⁴ for rail-motor acquisition proceedings). In a third major intermodal transportation case, the Second Circuit Court of Appeals dismissed the only judicial challenge²⁵ to the Commission's decision²⁶ of February 1987 by approving the CSX Corporation's (CSX) acquisition of Sea-Land Corporation.

Two major intermodal decisions were handed down by the Supreme Court. In one decision, the Court reversed²⁷ a 5th Circuit decision²⁸ concerning the proper scope of state and federal regulation of rail-motor surface transportation. The decision was an affirmation of the Commission's position that its exemption of the motor portion of intrastate trailer-on-flatcar/container-on-flatcar (TOFC/COFC) traffic is as fully effective to exempt such transportation from regulation as the Commission's prior exemption of the motor portion of interstate movements. As a result, such transportation is beyond the reach of state regulatory authorities.

In a second decision, the Supreme Court denied²⁹ petitions for certiorari in another intermodal transportation matter. The Court's action left standing a decision by the Sixth Circuit Court of Appeals³⁰ upholding a Commission order permitting CSX to acquire a controlling interest in American Commercial Barge Lines, Inc. The Commission approved the acquisition

under the Panama Canal Act, under 49 U.S.C. 11321 (permitting certain rail carrier acquisitions of water carriers), and under 49 U.S.C. 11344 (requiring Commission approval of the merger of two carriers).

The District of Columbia Circuit was the source of several important decisions in the motor carrier area during fiscal year 1987. In one case³¹, the Circuit affirmed the Commission's revocation of a carrier's nationwide general commodities authority, a revocation which marked the first time that the Commission had revoked such authority. In another action³², the Court affirmed the Commission's grant³³ of contract carrier authority to serve an entire industry as a class. The D.C. Circuit also reversed³⁴ the Commission's grant³⁵ of contract carrier authority to transport household goods nationwide under continuing contracts with "persons (except individuals)" as defined at 1 U.S.C. 1. The Commission had found that certain applicants had satisfied the "distinct needs test" for contract carriage.³⁶

²⁴ A.A. Ballou v. ICC, 821 F.2d 821 (D.C. Cir. 1987).

²⁵ RCCC v. USA and ICC, 803 F.2d 1186 (D.C. Cir. 1986).

²⁶ Ex Parte No. MC-185 (Sub-No. 1), Issuance of Permits Authorizing Industrywide Service, 133 M.C.C. 266 (1983).

²⁷ Global War Lines, Inc. v. ICC, 804 F.2d 1293 (D.C. Cir. 1987).

²⁸ Docket No. MC-1745 (Sub-No. 17), Interstate War Lines, Inc. Extension—Household Goods, September 9, 1983.

²⁹ The court distinguished RCCC v. ICC, 803 F.2d 1186 (D.C. Cir. 1986) as turning on the "dedication of equipment" test, 804 F.2d at 1304, n. 83. The court did not suggest that the instant case in any way limits the holding in that case. There are over 200 decisions involving contract carrier permits similar to the permit here. These cases have been remanded to the Commission and reopened, with the Commission giving the parties an opportunity to submit additional evidence addressing issues including whether applicants with the Commission: (1) to consider issuing a permit authorizing service to a more narrowly defined class of shippers; with distinct service needs; (2) to issue an amended permit authorizing the holder to dedicate equipment to the exclusive use of a shipper in a class in accordance with the applicable alternative statutory prerequisites for a permit; or (3) to issue a permit authorizing a carrier to serve the broad class of shippers previously authorized if the carrier demonstrates distinct needs based on a specific showing that it is

²⁴ The principal finding required by Section 11344(c) is that the acquiring railroad will use the "motor carrier transportation to public advantage in its operations."

²⁵ Marshall P. Salt v. Interstate Commerce Commission, et al. Nos. 87-3067 and 87-4037, (U.S.C.A. 2d Cir. August 12, 1987).

²⁶ Finance Docket No. 30900 (Sub-No. 1), Joint Application of CSX Corp. and Sea-Land Corp. under 49 U.S.C. 11321 (served February 11, 1987).

²⁷ ICC v. Best, 107 S.Ct. 767 (1987).

²⁸ State of Texas v. U.S. and ICC, 779 F.2d 452 (5th Cir. 1985).

²⁹ Crouse Corp. v. ICC, 107 S.Ct. 260 (1987); *Shimone v. ICC*, 107 S.Ct. 211 (1987).

³⁰ Crouse Corp. v. ICC, 781 F.2d 1137 (3d Cir. 1986).



The court disagreed and referred to the "unambiguous command" of 49 U.S.C. §10923(d)(2) that "the permit shall specify necessary conditions, including each person or class of persons . . . for which the carrier may provide transportation . . . to ensure that the carrier provides transportation as a motor contract carrier and within the scope of the permit." The court reasoned that the permit, by defining the class to include all private business entities, does not ensure that the transportation authorized will meet the distinct needs of the class.³⁷

Two other important circuit court decisions concerning motor carriers of passengers were decided favorably to the Commission during the past fiscal year. In one case, the Ninth Circuit Court³⁸ affirmed a Commission determination³⁹ that sightseeing tours from Las Vegas, Nevada, to the Arizona side of the Hoover Dam were bona fide interstate operations and therefore properly within federal rather than state jurisdiction. The court's decision is a significant affirmation of the Commission's power to interpret its own certifications and of the supremacy of a less restrictive federal regulatory system over state regulation.

In a second decision, the D.C. Circuit affirmed in part and remanded in part⁴⁰ a Commission decision⁴¹ granting motor bus operating authority to the Delaware Valley Transportation Company (DVTC). Lakeland Bus Lines, Inc. had sought broad discovery



and an oral hearing in conjunction with its protest to the DVTC application. Both of Lakeland's requests were denied. The court affirmed the Commission's basic position that broad discovery is inconsistent with the Bus Regulatory Reform Act⁴² or the Commission's regulations (49 C.F.R. 1114.21). However, the court remanded the case on the issue of the discoverability of information pertaining to schedules, routes, and service points.

Finally, in the area of rates and tariffs, there were several noteworthy decisions handed down by various courts of Appeals. The Third Circuit upheld⁴³ the Commission's Coal Rate Guidelines⁴⁴ as consistent with the Railroad Revitalization and Regulatory Reform Act of 1976⁴⁵ and the Staggers Act. The Commission's Guidelines adopt a pricing system intended to ensure that captive coal shippers will not pay more than is necessary for a rail carrier to earn adequate revenues, or pay more than is necessary for efficient service, and impose four constraints (carrier revenue adequacy, management inefficiency, stand-alone cost, and phasing) on rail rates for captive coal shipments.

The D.C. Circuit⁴⁶ affirmed in part and remanded in part a Commission market dominance ruling made on a individual rate complaint.⁴⁷ The complaint covered the rates charged by certain railroads for moving soda ash from Green River, Wyoming, over 238 specified routings to 157 destinations. The Commission had dismissed the

³⁷Offering a more detailed better tailored to fit specified special shippers requirements.

³⁸804 F.2d at 1301-03.

³⁹Gray Line Tours Co. of Southern Nevada v. ICC, 824 F.2d 811 (9th Cir. 1987).

⁴⁰Docket No. MC-C-10907, Gray Line Tours Co. of Southern Nevada v. Interstate Tours, et al., 132 M.C.C. 551 (1989).

⁴¹Lakeland Bus Lines, Inc. v. ICC, 810 F.2d 280 (D.C. Cir. 1987).

⁴²No. MC-28457 (Sub-No. 9), Delaware Valley Transportation Co. Extension—New York, New Jersey and Pennsylvania Regular Routes, September 25, 1984.

⁴³Pub. L. No. 97-261, 90 STAT. 1102 (1983).

⁴⁴Consolidated Rail Corp., et al. v. United States, and Consolidated Cases, 812 F.2d 1444 (3rd Cir. 1987).

⁴⁵Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines—Nationwide, 1 I.C.C. 2d 520 (1985).

⁴⁶Pub. L. No. 94-210, 90 STAT. 31 (1976).

⁴⁷General Chemical Corp. et al. v. U.S., 817 F.2d 944 (D.C. Cir. 1987).

⁴⁸Docket No. 384125, Allied Chemical Corporation, et al. v. Ann Arbor Railroad System, et al., 1 I.C.C. 2d 482 (1985).

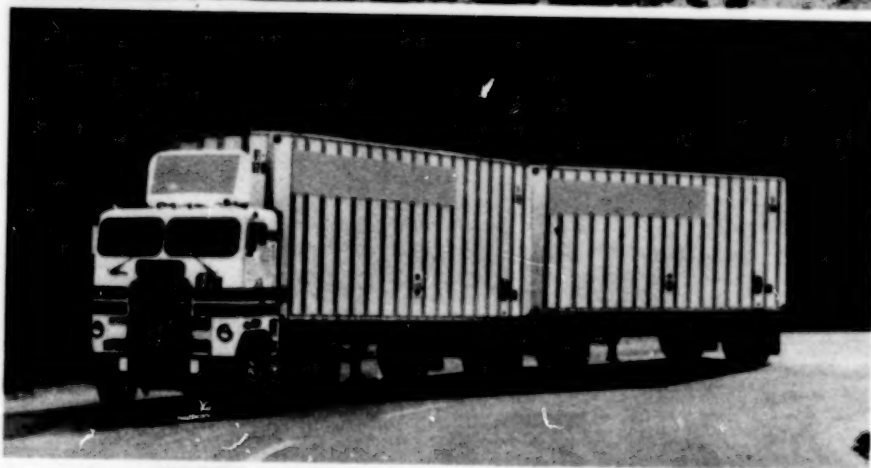
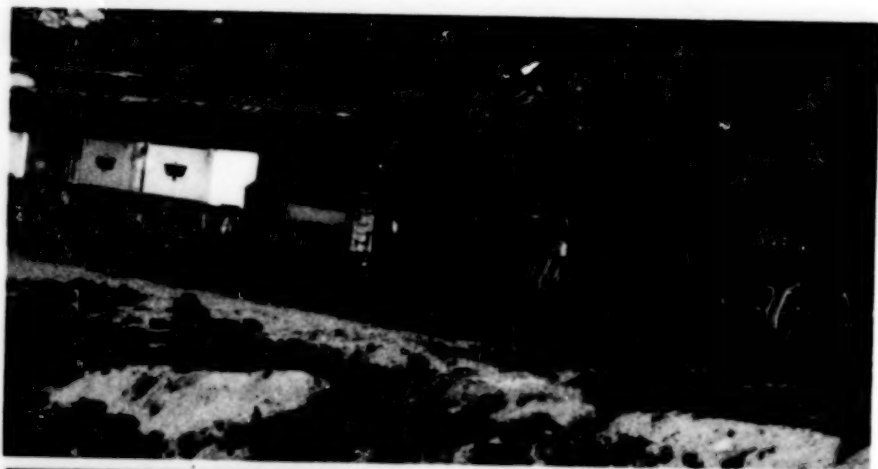
complaint (either entirely or with respect to future shipments) relative to 36 destinations and 78 routes because the revenue-to-variable cost ratios for those movements were less than the jurisdictional threshold. The Commission had determined that there was effective (primarily geographic) competition for the other movements. The court affirmed the dismissals based on revenue-to-variable cost findings, but disagreed with the Commission's analysis of geographic competition and remanded that part of the Commission's decision for further consideration.

Lastly, the Second Circuit affirmed⁴⁸ the Commission's determination⁴⁹ that the collective setting of rates for terminal services by the Niagara Frontier Tariff Bureau violated the statutory ban on collective single-line ratemaking and did not fall within any of the exceptions to that ban. This case was significant as the first judicial affirmation of the Commission's interpretation of the statutory exemptions to the ban on collective single-line rate making.

⁴⁸ *Niagara Frontier Tariff Bureau, Inc. v. U.S.*, 828 F.2d 1188 (2d Cir. 1987).

⁴⁹ I&S Docket No. M-30377, *Terminal Service Charges*, NFTA, August 1, 1986.

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APPENDIX A

Commission Organization

The major bureaus and offices of the Commission are listed below. Heads of each bureau or office report to the Chairman via the channels indicated on the organizational chart contained within this appendix.

STAFF OFFICIALS

Office of the Chairman:

Chief of Staff David M. Konschnik
Chief of Policy John F. Hennigan

Office of Government and Public Affairs:

Director Alexander H. Jordan

Office of Public Assistance:

Director Samuel E. Eastman
Deputy Director Dan G. King

Office of Human Relations:

Director Alexander W. Dobbins

Office of the Managing Director:

Managing Director Edward E. Guthrie
Director, Personnel Office Richard H. Mooers
Chief, Budget and Fiscal Office Mary G. Hoya
Chief, Administrative Services Virgil L. Schultz
Chief, Systems Development Edward F. Welkener

Office of the Secretary:

Secretary Noreta R. McGee
Assistant Secretary Kathleen M. King

Office of the General Counsel:

General Counsel Robert S. Burk
Deputy General Counsel for Research and Legislation .. Daniel D. Campbell
Deputy General Counsel Henri F. Rush
Associate General Counsel Ellen D. Hanson
Deputy Associate General Counsel John J. McCarthy, Jr.
Deputy Associate General Counsel Craig M. Keats

Office of Proceedings:

Director Jane F. Mackall
Deputy Director, Section of Railroads Joseph H. Dettmar
Acting Deputy Director, Section of Motor Carriers Richard F. Felder

Office of Transportation Analysis:

Director Richard H. Klem
Chief, Section of Rail Services Planning Michael E. Sullivan
Chief, Section of Energy and Environment Carl P. Bausch
Chief, Section of Research and Analysis Leland L. Gardner

Office of Hearings:

Chief Administrative Law Judge Paul S. Cross

Bureau of Accounts:

Director Ronald S. Young

Office of Compliance and Consumer Assistance:

Director Bernard Gaillard

Associate Director William J. Love

Deputy Director, Section of Operations Heber P. Hardy

Deputy Director, Section of Enforcement Charles E. Wagner

Bureau of Traffic:

Director Neil S. Llewellyn

Chief, Section of Rates and Informal Cases Lawrence C. Herzig

Chief, Section of Tariffs Charles E. Langyher III

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD
OFFICES AND REGIONAL HEADQUARTERS****Eastern Region**

Regional Headquarters	M. Faith Angell Regional Director Room 16400 3535 Market St. Philadelphia, PA 19104
Atlanta	Suite 360 Peachtree Twenty-Fifth Bldg. 1718 Peachtree St., N.W. Atlanta, GA 30309
Baltimore	1025 Federal Bldg. Charles Ctr. 31 Hopkins Plaza Baltimore, MD 21201
Boston	Room 1015 Boston Federal Office Bldg. 10 Causeway St. Boston, MA 02222
Charlotte	Room CC-516 Mart Office Bldg. 800 Briar Creek Rd. Charlotte, NC 28205
Cleveland	Room 913 Celebrezze Federal Bldg. 1240 E. 9th St. Cleveland, OH 44119
Jacksonville	Suite 233 4057 Carmichael Ave. Jacksonville, FL 32207
New York	Room 1807 Jacob K. Javits Federal Bldg. 26 Federal Plaza New York, NY 10278

Central Region

Regional Headquarters	William Redmond, Jr. Regional Director Room 1304 Everett McKinley Dirksen Bldg. 219 South Dearborn St. Chicago, IL 60604
Fort Worth	Suite 500 411 West 7th St. Ft. Worth, TX 76102
Indianapolis	Room 429 Federal Bldg. & U.S. Courthouse 46 E. Ohio St. Indianapolis, IN 46204
Kansas City	2111 Federal Bldg. 911 Walnut St. Kansas City, MO 64106
Minneapolis	Room 475 Federal Bldg. and U.S. Courthouse 110 S. Fourth St. Minneapolis, MN 55401
New Orleans	T-9038 Federal Bldg. and U.S. Post Office 701 Loyola Ave. New Orleans, LA 70113
Omaha	Room 728 Federal Office Bldg. 106 S. 15th St. Omaha, NE 68102
St. Louis	Room 1161 210 N. 12th St. St. Louis, MO 63101

Western Region

Regional Headquarters John H. Kirkemo
Regional Director
Suite 500
211 Main Street
San Francisco, CA 94105

Denver Room 440
Drawer 3549
Federal Office Bldg.
1961 Stout St.
Denver, CO 80294

Los Angeles 1321 Federal Bldg.
300 N. Los Angeles St.
Los Angeles, CA 90012

Phoenix 3415 Federal Bldg.
230 N. First Ave.
Phoenix, AZ 85025

Salt Lake City 2419 Federal Bldg.
125 State St.
Salt Lake City, UT 84138

Seattle 858 Federal Bldg.
915 Second Ave.
Seattle, WA 98174

INTERSTATE COMMERCE COMMISSIONERS 1887-1987

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
1. COOLEY, Thomas M.	Mich.	Rep.	Mar. 31, 1887	Jan. 12, 1892
2. MORRISON, William R.	Ill.	Dem.	Mar. 31, 1887	Dec. 31, 1897
3. SCHOONMAKER, Augustus	N.Y.	Dem.	Mar. 31, 1887	Dec. 31, 1890
4. WALKER, Aldace F.	Vt.	Rep.	Mar. 31, 1887	Mar. 31, 1889
5. BRAGG, Walter L.	Ala.	Dem.	Mar. 31, 1887	Aug. 21, 1891
6. VEAZEY, Wheelock G.	Vt.	Rep.	Sept. 10, 1889	Dec. 20, 1896
7. KNAPP, Martin A.	N.Y.	Rep.	Mar. 2, 1891	Dec. 12, 1910
8. McDILL, James W.	Iowa	Rep.	Jan. 13, 1892	Feb. 28, 1894
9. CLEMENTS, Judson C.	Ga.	Dem.	Mar. 17, 1892	June 18, 1917
10. YEOMANS, James D.	Iowa	Dem.	May 2, 1894	Mar. 6, 1905
11. PROUTY, Charles A.	Vt.	Rep.	Dec. 21, 1896	Feb. 2, 1914
12. CALHOUN, William J.	Ill.	Rep.	Mar. 21, 1898	Sept. 30, 1899
13. FIFER, Joseph W.	Ill.	Rep.	Nov. 4, 1899	Dec. 30, 1905
14. COCKRELL, Francis M.	Mo.	Dem.	Mar. 11, 1905	Dec. 31, 1910
15. LANE, Franklin K.	Calif.	Dem.	July 2, 1906	Mar. 5, 1913
16. CLARK, Edgar E.	Iowa	Rep.	July 31, 1906	Aug. 13, 1921
17. HARLAN, James S.	Ill.	Rep.	Aug. 28, 1906	Dec. 31, 1918
18. McCHORD, Charles C.	Ky.	Dem.	Dec. 31, 1910	Jan. 1, 1926
19. MEYER, Balthasar H.	Wis.	Rep.	Dec. 31, 1910	Apr. 30, 1939
20. MARBLE, John H.	Calif.	Dem.	Mar. 10, 1913	Nov. 21, 1913
21. HALL, Henry C.	Colo.	Dem.	Mar. 21, 1914	Jan. 13, 1928
22. DANIELS, Winthrop M.	N.J.	Dem.	Apr. 6, 1914	July 1, 1923
23. AITCHISON, Clyde B.	Oreg.	Rep.	Oct. 5, 1917	July 10, 1952
24. WOOLLEY, Robert W.	Va.	Dem.	Oct. 5, 1917	Dec. 31, 1920
25. ANDERSON, George W.	Mass.	Dem.	Oct. 15, 1917	Nov. 5, 1918
26. EASTMAN, Joseph B.	Mass.	Ind.	Feb. 17, 1919	Mar. 15, 1944
27. FORD, Henry J. ¹	N.J.	Dem.	June 11, 1920	Mar. 4, 1921
28. POTTER, Mark W.	N.Y.	Dem.	June 24, 1920	Feb. 20, 1925
29. ESCH, John J.	Wis.	Rep.	Mar. 28, 1921	May 29, 1928
30. CAMPBELL, Johnston B.	Wash.	Rep.	May 5, 1921	Jan. 6, 1930
31. LEWIS, Ernest I.	Ind.	Rep.	May 5, 1921	Dec. 31, 1932
32. COX, Frederick I.	N.J.	Rep.	Sept. 1, 1921	Dec. 31, 1926
33. McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34. WOODLOCK, Thomas F.	N.Y.	Dem.	Apr. 1, 1925	Aug. 31, 1930
35. TAYLOR, Richard V.	Ala.	Dem.	Jan. 16, 1926	Dec. 31, 1929
36. BRAINERD, Ezra, Jr.	Okla.	Rep.	Feb. 23, 1927	Dec. 31, 1933
37. PORTER, Claude R.	Iowa	Dem.	Jan. 28, 1928	Aug. 17, 1946
38. FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934
39. LEE, William E.	Idaho	Rep.	Jan. 18, 1930	Aug. 18, 1953

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
40. TATE, Hugh M.	Tenn.	Rep.	Feb. 28, 1930	Sept. 16, 1937
41. MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42. MILLER, Carroll	Pa.	Dem.	June 14, 1933	Dec. 24, 1949
43. SPLAWN, Walter M. W.	Tex.	Dem.	Feb. 1, 1934	June 30, 1953
44. CASKIE, Marion M.	Ala.	Dem.	Aug. 26, 1935	Mar. 31, 1940
45. ROGERS, John L.	Tenn.	Rep.	Sept. 16, 1937	Apr. 30, 1952
46. ALLDREDGE, J. Haden	Ala.	Dem.	May 1, 1939	Oct. 31, 1955
47. PATTERSON, William J.	N.D.	Ind.	July 31, 1939	July 10, 1953
48. JOHNSON, J. Monroe	S.C.	Dem.	June 3, 1940	June 4, 1956
49. BARNARD, George M.	Ind.	Rep.	Dec. 2, 1944	Jan. 2, 1949
50. MITCHELL, Richard F.	Iowa	Dem.	Feb. 3, 1947	June 15, 1959
51. CROSS, Hugh W.	Ill.	Rep.	Apr. 11, 1949	Nov. 25, 1955
52. KNUDSON, James K.	Utah	Rep.	Apr. 20, 1950	May 22, 1954
53. ELLIOTT, Kelso	Ind.	Rep.	July 10, 1952	Feb. 29, 1956
54. ARPAIA, Anthony F.	Conn.	Dem.	July 11, 1952	Mar. 15, 1960
55. CLARKE, Owen	Wash.	Rep.	July 10, 1953	Jan. 15, 1958
56. FREAS, Howard G.	Calif.	Rep.	Aug. 18, 1953	Dec. 31, 1966
57. TUGGLE, Kenneth H.	Ky.	Rep.	Sept. 8, 1953	July 31, 1975
58. WINCHELL, John H.	Colo.	Rep.	July 28, 1954	Apr. 3, 1961
59. HUTCHINSON, Everett	Tex.	Dem.	Feb. 1, 1955	Mar. 31, 1965
60. MURPHY, Rupert L.	Ga.	Dem.	Dec. 30, 1955	Aug. 31, 1978
61. MINOR, Robert W.	Ohio	Rep.	Feb. 15, 1956	Sept. 30, 1958
62. WALRATH, Laurence K.	Fla.	Dem.	Mar. 29, 1956	June 30, 1972
63. McPHERSON, Donald P., Jr.	Pa.	Rep.	June 4, 1956	Mar. 29, 1963
64. GOFF, Abe McGregor	Idaho	Rep.	Feb. 12, 1958	July 30, 1967
65. WEBB, Charles A.	Va.	Rep.	Sept. 30, 1958	Mar. 31, 1967
66. HERRING, Clyde E.	Iowa	Dem.	Sept. 21, 1959	May 25, 1964
67. BUSH, John W.	Ohio	Dem.	Apr. 3, 1961	Nov. 2, 1972
68. TUCKER, William H.	Mass.	Dem.	Apr. 3, 1961	Dec. 31, 1967
69. TIERNEY, Paul J.	Md.	Rep.	Mar. 29, 1963	Feb. 28, 1970
70. BROWN, Virginia Mae	W.Va.	Dem.	May 25, 1964	July 23, 1979
71. DEASON, Willard	Tex.	Dem.	Sept. 8, 1965	July 31, 1975
72. STAFFORD, George M.	Kans.	Rep.	Apr. 28, 1967	Aug. 31, 1980
73. SYPHERS, Grant E.	Calif.	Rep.	July 31, 1967	Feb. 5, 1968
74. HARDIN, Dale W.	Ill.	Rep.	July 31, 1967	Aug. 31, 1977
75. BURKE, Wallace R.	Conn.	Dem.	Aug. 21, 1968	June 28, 1969
76. JACKSON, Donald L.	Calif.	Rep.	Mar. 20, 1969	June 30, 1972
77. GRESHAM, Robert C.	Md.	Rep.	Dec. 15, 1969	June 18, 1982
78. BREWER, W. Donald	Colo.	Rep.	July 23, 1970	June 30, 1974
79. WIGGIN, Chester M., Jr.	N.H.	Rep.	Oct. 24, 1972	July 31, 1973
80. McFARLAND, Alfred T.	Tenn.	Ind.	Nov. 1, 1972	Nov. 10, 1977
81. MONTEJANO, Rodolfo ¹	Calif.	Dem.	Nov. 3, 1972	Mar. 2, 1973
82. O'NEAL, A. Daniel, Jr.	Wash.	Dem.	Apr. 12, 1973	Dec. 31, 1979
83. CLAPP, Charles L.	Mass.	Rep.	Mar. 14, 1974	Mar. 19, 1982

Interstate Commerce Commissioners	State	Party	Date of Office	End of Service
84. CORBER, Robert J.	Va.	Rep.	Mar. 13, 1975	Dec. 1, 1976
85. CHRISTIAN, Betty Jo	Tex.	Dem.	Apr. 7, 1976	Dec. 31, 1979
86. TRANTUM, Thomas A.	Conn.	Rep.	July 23, 1979	July 31, 1981
87. GASKINS, Darius W.	D.C.	Dem.	July 23, 1979	Feb. 1, 1981
88. ALEXIS, Marcus	Ill.	Dem.	Aug. 27, 1979	June 30, 1981
89. GILLIAM, Reginald E.	Va.	Dem.	Apr. 21, 1980	Feb. 1, 1983
90. TAYLOR, Reese H., Jr.	Nev.	Rep.	June 25, 1981	Dec. 31, 1985
91. STERRETT, Malcolm M. B. ²	Md.	Rep.	Feb. 12, 1982	
92. ANDRE, Frederic N. ²	Ind.	Rep.	Mar. 19, 1982	
93. SIMMONS, J. J. III ^{2,3}	Okla.	Dem.	Apr. 27, 1982	Feb. 28, 1983
			Sept. 10, 1984	
94. GRADISON, Heather J. ²	Ohio	Rep.	June 18, 1982	
95. LAMBOLEY, Paul H. ²	Nev.	Dem.	Sept. 11, 1984	
96. STRENIO, Andrew J., Jr.	Md.	Dem.	Sept. 14, 1984	Dec. 31, 1985

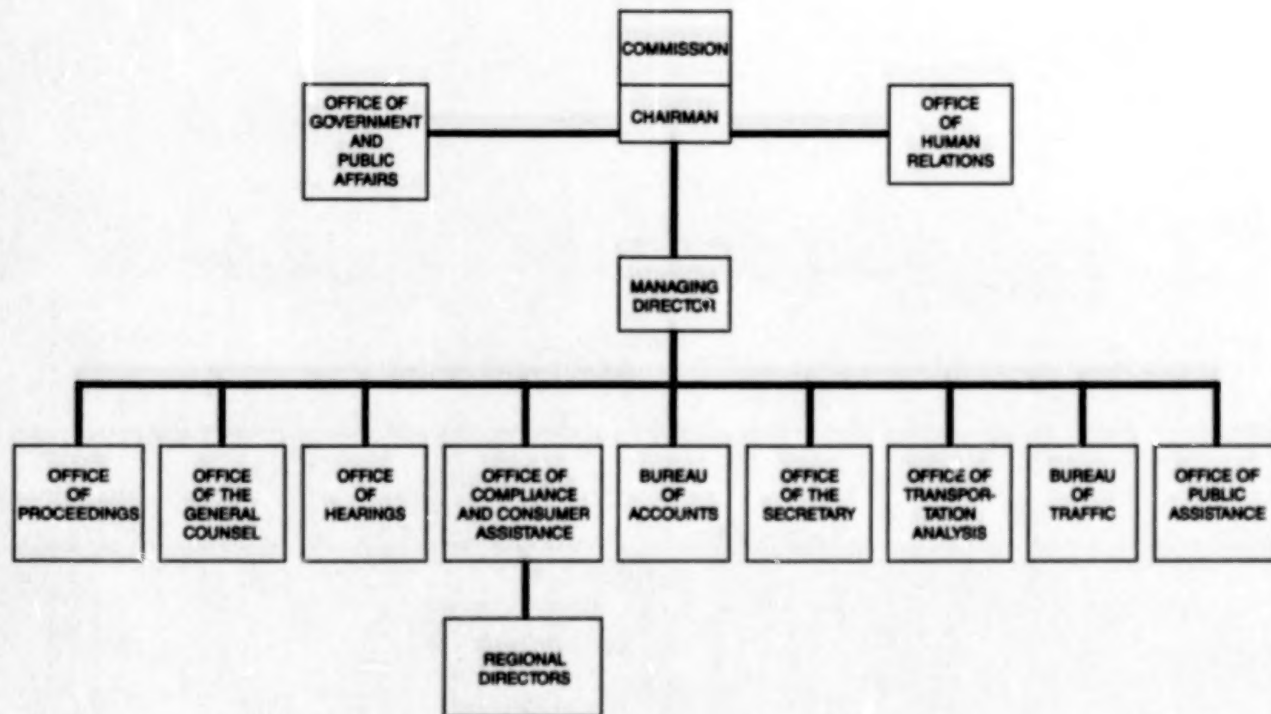
¹Recess appointment only, not confirmed.

²Currently serving.

³Commissioner Simmons resigned as a Commission member in February 1983 following his confirmation as Under Secretary of the Department of the Interior. He rejoined the Commission in September 1984 following his Presidential appointment and Senate confirmation.

INTERSTATE COMMERCE COMMISSION

Organizational Chart



APPENDIX B

Commission Workload

Table 1.—Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1987.

Case Type	Motor Matters ¹				
	Closings				Total
	Open-ings	Opposed	Un-opposed	Dismissed/ Rejected/ With- drawn	
Rulemakings	14	25	0	2	27
Motor Property Licensing:					
Initial Common	2,674	9	2,543	31	2,583
Initial Contract	5,345	27	5,077	23	5,127
Extension Common	723	14	742	6	762
Extension Contract	849	6	887	3	896
Motor Passenger Licensing:					
Initial Common	511	7	500	15	522
Initial Contract	28	0	30	1	31
Extension Common	104	8	98	3	109
Extension Contract	3	0	3	0	3
Passenger Carrier Exit ²	15	8	0	7	15
Water Carrier Licensing	9	1	10	3	14
Freight Forwarder Licensing	66	0	54	18	72
Property Broker Licensing:					
Initial	1,965	2	1,884	26	1,912
Extension	72	1	83	2	86
Motor Carrier Complaints:					
Rate-Ex Parte MC-177	25	11	0	0	11
Interstate/Intrastate	2	3	0	0	3
Other	11	16	0	0	16
Restriction Removal	2	0	1	1	2
Investigation & Suspension	11	14	0	0	14
Motor Rate	6	13	0	0	13
Passenger Rate Review	0	3	0	0	3
Motor Carrier Finance	320 ³	17	272	23	312
Small Carrier Transfer	677 ⁴	2	674	24	700
Motor Finance Temporary Authority ..	222	0	215	8	223
Rate Bureau	0	2 ⁵	0	11 ⁶	13
Other Motor Matters	23 ⁷	7	7	6	20
Totals	13,677	194	13,080	213	13,489

¹ The categories for reporting motor proceedings have been revised since the Commission's 1986 Annual Report to reflect more accurately Commission workload and case distribution.

² This category was reflected inappropriately in the 1986 Annual Report as "Passenger Carrier Licensing".

³ Includes 305 exemptions according to docket Ex Parte 55 (Sub-No. 57).

⁴ Includes 565 applications processed under exemption rules according to docket Ex Parte 55 (Sub-No. 57A).

⁵ Final approvals. In addition to the two rate bureau proceedings closed (final approvals) during fiscal year 1987, the Commission also provisionally approved agreements in four proceedings and continued provisional approvals in 11 others.

⁶ Encompasses 10 rate bureau proceedings in which antitrust immunity was revoked and one dismissal. One additional proceeding that conditionally revoked a rate bureau proceeding is not reflected here because the bureau complied with the condition and refilled its agreement.

⁷ Includes show-cause revocations, investigations and revocations, declaratory orders, and water carrier authority transfers.

Rail Matters					
Case Type	Closings				Total
	Openings ¹	Pending	Procedural Decisions	Substantive Decisions	
Rulemakings	18	34	51	68	119
Abandonments (non-NERSA) ²	38	24	87	69	156
Abandonments (Conrail under NERSA)	22	4	0	84	84
Abandonment exemptions ³	125	42	54	152	206
Fates: Complaints, declaratory orders and investigations	11	74	69	240	309
Investigation and suspension ...	1	0	1	5	6
Exemptions	10	4	0	13	13
Finance docket: exemptions	178	45	25	283	308
Finance docket: others ⁴	62	69	73	212	285
Totals	465	296	360	1126	1486

¹ Excludes filings rejected by letter, reopenings and court remands.

² North East Rail Service Act.

³ Includes petitions and notices of exemption.

⁴ Includes trackage rights, leases, feeder lines, acquisitions, mergers, interlocking directorates, and other financial transactions.

Table 2.—Rulemaking proceedings pending and closed during fiscal year 1987 (* indicates actions completed).

RAILROADS

*Ex Parte No. 230 (Sub-No. 5)	Improvement of TOFC/COFC Regulation.
*Ex Parte No. 230 (Sub No. 5A)	Petition to Exempt Rail Movement of New Containers and Trailers.
*Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC/COFC Regulations.
Ex Parte No. 270 (Sub-No. 5) ¹	Investigation of Railroad Freight Rate Structure—Iron Ores.
Ex Parte No. 270 (Sub-No. 6) ¹	Investigation of Railroad Freight Rate Structure—Scrap Iron & Steel.
*Ex Parte No. 274 (Sub-No. 3D)	Abandonment of Rail Lines—Use of Opportunity Costs.
*Ex Parte No. 274 (Sub-No. 8)	Exemption of Out of Service Rail Lines.
*Ex Parte No. 274 (Sub-No. 11)	Abandonment Regulations—Costing.
Ex Parte No. 274 (Sub-No. 13)	Rail Abandonment—Use of Rights-of-Way as Trails.
Ex Parte No. 274 (Sub-No. 16)	Exemption of Rail Line Abandonments or Discontinuances—Offers of Financial Assistance.
*Ex Parte No. 274 (Sub-No. 17)	Abandonments—Delegation of Authority.
*Ex Parte No. 282 (Sub-No. 7)	Special Intermodal Authority.
Ex Parte No. 290 (Sub-No. 2)	Railroad Cost Recovery Procedures.
Ex Parte No. 290 (Sub-No. 4)	Railroad Cost Recovery Procedures—Productivity Adjustment Factor.
Ex Parte No. 290 (Sub-No. 5)	Quarterly Rail Cost Adjustment Factor.
Ex Parte No. 319	Investigation of Freight Rates for the Transportation of Recyclable or Recycled Commodities.
Ex Parte No. 319 (Sub-No. 1) ²	Further Investigation of Freight Rates for the Transportation of Recyclables or Recycled Material.
Ex Parte No. 328	Investigation of Tank Car Allowance System.
Ex Parte No. 334 (Sub-No. 6)	Review of Car Hire Regulations.
*Ex Parte No. 346 (Sub-No. 19)	Boxcar Car Hire and Car Service.
Ex Parte No. 346 (Sub-No. 19A)	Petition for Exemption—Boxcar Provisions—Delaware Otsego.
*Ex Parte No. 346 (Sub-No. 20)	Exemption from Regulation—Storage Leases.

Table 2.—Rulemaking proceedings pending and closed during fiscal year 1987—Continued.

RAILROADS—Continued

*Ex Parte No. 346 (Sub-No. 22)	Western Railroads—Petition for Rulemaking—Short Notice Effectiveness for Independently Filed Rail Carrier Rates.
Ex Parte No. 346 (Sub-No. 23)	Railroad Exemption—Filing Quotations Under Sec. 10721.
Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines—Nationwide.
Ex Parte No. 347 (Sub-No. 2)	Rate Guidelines—Non-Coal Proceedings.
Ex Parte No. 349 ³	Increased Freight Rates and Charges, 1978, Nationwide.
Ex Parte No. 357 ⁴	Increased Freight Rates & Charges, Nationwide—8 Percent.
Ex Parte No. 375 (Sub-No. 1) ⁵	Increased Freight Rates & Charges—1980 Nationwide Phase II.
*Ex Parte No. 385 (Sub-No. 2)	Procedures on Release of Data from the ICC Waybill Sample.
Ex Parte No. 386 ⁶	Increased Freight Rates and Charges—Nationwide—1981.
Ex Parte No. 387	Railroad Transportation Contracts.
*Ex Parte No. 387 (Sub-No. 959)	Contract Rate Competitive Impact Report—Grain Shippers.
*Ex Parte No. 387 (Sub-No. 960)	Railroad Transportation Contracts—Exempt—Department of Defense.
Ex Parte No. 388 ⁷	State Intrastate Rail Rate Authority.
*Ex Parte No. 389	Procedures for Requesting Rail Variable Cost and Revenues Determination for Joint Rates Subject to Surcharge or Cancellation.
Ex Parte No. 392 (Sub-No. 1)	Class Exemption for the Acquisition and Operation of Rail Line Under 49 U.S.C. 10901.
Ex Parte No. 392 (Sub-No. 2)	Class Exemption for the Construction of Connecting Tracks 49 U.S.C. 10901.
Ex Parte No. 392 (Sub-No. 3)	Class Exemption for Rail Construction.
*Ex Parte No. 393 (Sub-No. 1)	Standards for Railroad Revenue Adequacy.
Ex Parte No. 393 (Sub-No. 2)	Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes.
Ex Parte No. 394 (Sub-No. 3)	Cost Ratios for Recyclables—1987 Determination.

Table 2.—Rulemaking proceedings pending and closed during fiscal year 1987—Continued.

RAILROADS—Continued

Ex Parte No. 394 (Sub-No. 4)	Cost Ratios for Recyclables—Compliance Procedures.
*Ex Parte No. 395 (Sub-No. 1)	Keokuk Northern Real Estate Company Et Al.—Notice of Election.
Ex Parte No. 399	Cost Recovery Percentage.
*Ex Parte No. 421	Complaints Filed Under Staggers Rail Act of 1980.
Ex Parte No. 431	Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purpose of Surcharge and Jurisdictional Threshold Calculations.
Ex Parte No. 444	Electronic Filing of Tariffs.
Ex Parte No. 445 (Sub-No. 2)	Intramodal Rail Competition—Proportional Rates.
*Ex Parte No. 455	Revision of the Uniform System of Accounts for Railroads.
Ex Parte No. 462	Exemption of Demurrage from Regulation.
*Ex Parte No. 464	Railroad Cost of Capital—1985.
*Ex Parte No. 465	Railroad Revenue Adequacy 1985 Determination.
*Ex Parte No. 466	Railroad Cost of Capital—1986.
Ex Parte No. 466 (Sub-No. 1)	Railroad Cost of Capital—Proposed Expedited Procedures.
Ex Parte No. 468	Review of Railroad Depreciation Studies by Independent Accountants.
*Ex Parte No. 472	Railroad Revenue Adequacy—1986 Determination.

TRUCK AND BUS COMPANIES^a

*Ex Parte No. 55 (Sub-No. 43A)	Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)
*Ex Parte No. 55 (Sub-No. 63)	Technical Revisions to 49 CFR Part 1160
Ex Parte No. 297 (Sub No. 7)	Motor Carrier Rate Bureaus—Expansion of Collective Rate-making Territory
Ex Parte No. 342	Procedures Governing the Processing, Investigation and Distribution of Overcharge, Duplicate Payment or Overcollection Claims—Petition for Modification
Ex Parte No. 467	Exemption of Water Carrier Operations
*Ex Parte No. 469	Commission Organization: Delegation of Authority

Table 2.—Rulemaking proceedings pending and closed during fiscal year 1987—Continued.

TRUCK AND BUS COMPANIES—Continued

Ex Parte No. 470.....	In the Matter of William Sheridan
Ex Parte No. MC-1	Payments of Rates and Charges of Motor Carriers
Ex Parte No. MC-5 (Sub-No. 8).....	Property Broker Security for the Protection of the Public
Ex Parte No. MC-19 (Sub-No. 36)	Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)
*Ex Parte No. MC-37 (Sub-No. 39).....	Petition to Expand Commercial Zone at Nogales, AZ
Ex Parte No. MC-37 (Sub-No. 40)	Commercial Zones and Terminal Areas
*Ex Parte No. MC-41	Identification of Motor Vehicles
Ex Parte No. MC-42	Handling of C.O.D. Shipments
*Ex Parte No. MC-43 (Sub-No. 16).....	Lease and Interchange of Vehicles (Identification Devices) (49 CFR Part 1057)
*Ex Parte No. MC-43 (Sub-No. 17).....	Authorized Carrier Lease of Equipment and Drivers to Private Carriers and Shippers (49 CFR Part 1057)
*Ex Parte No. MC-43 (Sub-No. 19).....	Lease and Interchange of Vehicles—Computer Generated Documents
*Ex Parte No. MC-59	Motor Carrier Operation in the State of Hawaii; Removal of Rules
*Ex Parte No. MC-65 (Sub-No. 7).....	Passenger Motor Carrier Superhighway and Deviation Rules
*Ex Parte No. MC-95 (Sub-No. 4).....	Practices of Motor Common Carriers of Passengers— Checked Baggage Prohibitions & Liability Exemptions
*Ex Parte No. MC-107	Transportation of Government Traffic
Ex Parte No. MC-111 (Sub-No. 1).....	Transfers of Operating Rights
*Ex Parte No. MC-122 (Sub-No. 2).....	Lease of Equipment and Drivers of Private Carriers— Petitions for Modification
*Ex Parte No. MC-122 (Sub-No. 4).....	Interpretation—Intercompany Hauling—Petition for Declaratory Order
*Ex Parte No. MC-142 (Sub-No. 1).....	Removal of Restrictions from Authorities, Motor Carriers of Property
*Ex Parte No. MC-142 (Sub-No. 2).....	Freight Forwarder Restrictions

Table 2.—Rulemaking proceedings pending and closed during fiscal year 1987—Continued

TRUCK AND BUS COMPANIES—Continued

Ex Parte No. MC-142 (Sub-No. 4)	Revision of Licensing Procedures to Include Applications for Removal of Restrictions from Authorities of Motor Carriers of Property and Passengers—Removal of 49 CFR Part 1165
*Ex Parte No. MC-165 (Sub-No. 2)	Exemption of Water Contract Carriers from Tariff Filing Requirements
*Ex Parte No. MC-170 (Sub-No. 1)	Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates
*Ex Parte No. MC-177	National Industrial Transportation League—Petition to Institute Rulemaking on Negotiated Motor Common Carrier Rates
*Ex Parte No. MC-178	Investigation into Motor Carrier Insurance Rates
*Ex Parte No. MC-178 (Sub-No. 1)	Petition for Investigation of Insurance Surcharges
Ex Parte No. MC-178 (Sub-No. 3)	Investigation into Motor Carrier Insurance Rates, Conference of Interested Parties
*Ex Parte No. MC-178 (Sub-No. 4)	Implementation of Liability Risk Retention Act of 1986
*Ex Parte No. MC-180	Petition for a Rulemaking on the Payment of Discounts by Motor Carriers of Property to the Nonpayer of the Freight Charges
*Ex Parte No. MC-181	Elimination of Cargo Liability Security Requirements for Nonhousehold Goods Freight Forwarders [49 CFR Part 1084]
*Ex Parte No. MC-182	Petition to Institute a Rulemaking Proceeding to Clarify When a Single-State Movement is in Interstate or Foreign Commerce Subject to the Commission's Jurisdiction
*Ex Parte No. MC-183	Clarification of Insurance Regulation
*Ex Parte No. MC-184	Regulation of Household Goods Freight Forwarders Under the Surface Freight Forwarder Deregulation Act of 1986
*Ex Parte No. MC-186	Elimination of Embargo Regulations [49 CFR Part 1059]

¹ Reopened with Ex Parte No. 319, but not previously listed.^{2,3} Reopened with Ex Parte No. 319, but not previously listed.⁴ Reopened with No. 37063 and not previously reported.^{5,6} Reopened with Ex Parte No. 319, but not previously listed.⁷ Subs. 7 and 26 involving Illinois and Oklahoma, respectively.⁸ Embraces proceedings involving freight forwarders, property brokers, and water carriers.

TABLE 3.—Listing of formal significant cases, September 30, 1987
MOTOR SECTION

Number	Title/Description	Statutory Deadline
1. Ex Parte No. MC-165 (Sub-No. 2)	Exemption of Water Contract Carriers From Tariff Filing Requirements	None
2. Ex Parte No. MC-170 (Sub-No. 1)	Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates	None
3. Ex Parte No. MC-177	National Industrial Transportation League — Petition to Institute Rulemaking on Negotiated Motor Common Carrier Rates	None
4. Ex Parte No. MC-182	Petition to Institute a Rulemaking Proceeding to Clarify When a Single-State Movement is in Interstate or Foreign Commerce Subject to the Commission's Jurisdiction	None
5. Ex Parte No. MC-184	Regulation of Household Goods Freight Forwarders Under the Surface Freight Forwarder Deregulation Act of 1986	None

RAIL SECTION

Number	Title/Description	Statutory Deadline
1. Ex Parte No. 387	<i>Railroad Transportation Contracts</i>	None
2. Finance Docket No. 30400	<i>Santa Fe Southern Pacific Corp.-Control-Southern Pacific Trans. Company</i>	None
3. Finance Docket No. 30800	<i>Union Pacific Corporation-Missouri Pacific Railroad Company-Control-Missouri-Kansas-Texas Railroad Company</i>	4/2/88
4. No. 37809	<i>McCarty Farms, Inc., et al. v. Burlington Northern Inc.</i>	None
5. No. 40073	<i>South-West Railroad Car Parts v. Missouri Pacific Railroad Co.</i>	1/7/88

TABLE 4.—Informal Proceedings

	Fiscal Year 1985	Fiscal Year 1986	Fiscal Year 1987
Applications for motor temporary authority			
Filed.....	2,694	2,636	3,172
Disposed of.....	2,713	2,608	3,155
Pending at end of year.....	139	167	184
Petitions in application for motor carrier temporary authority (received at headquarters)			
Filed.....	71	5	8
Disposed of.....	103	13	8
Pending at end of year.....	8	0	0

TABLE 5.—Certificates issued for abandonment, construction, acquisition and operation of rail lines (these figures reflect abandonment applications filed by bankrupt carriers and Conrail for fiscal years 1984 and 1985 under North East Rail Service Act (NERSA)).

	Fiscal Year 1985		Fiscal Year 1986		Fiscal Year 1987	
	Appli- cations	Miles	Appli- cations	Miles	Appli- cations	Miles
1. Abandonment applications filed.....	138 ¹	2,877.23	141 ²	1,890.89	60 ³	1,208.27
Certificate of abandonment						
Granted.....	148	2,342.63	117	1,417.35	60	818.23
Denied.....	3	102.85	4	147.86	2	31.80
Dismissed.....	30	656.88	2	74.16	3	196.29
Dismissed because of sale.....	0	0	9	201.03	8	71.87
2. Construction applications filed.....	7 ⁴	98.75	0	0	0	0
Granted.....	5	171.00	1	10.70	1	58.08
Denied.....	0	0	0	0	0	0
Dismissed.....	1	0.25	1	6.50	0	0
3. Acquisition and operation applications filed.....	1	15.35	0	0	0	0
Granted.....	0	0	1	15.35	0	0
Denied.....	0	0	0	0	0	0
Dismissed.....	1	28.0	0	0	0	0

¹ 29 were Conrail filings.² 89 were Conrail filings.³ 22 were Conrail filings.⁴ Includes four court remands.

TABLE 6.—Tariff Schedules, fiscal year 1987

	Received	Criticized	Rejected
Freight			
Common carrier tariffs:			
Rail.....	77,905	1,290	151
Motor.....	1,190,765	5,968	8,431
Water.....	22,686	10	85
Freight forwarder.....	2,493	1	76
International ocean-land intermodal.....	107,546	0	0
Total.....	1,401,395	7,269	8,743
Rail carrier contract filings.....			
	29,854	0	67
Passenger tariffs:			
Rail.....	0	0	0
Motor.....	2,438	48	55
Water.....	1	0	0
Total passenger.....	2,439	48	55
Grand total.....	1,433,688	7,317	8,865

TABLE 7.—Action taken on proposals (protested and non-protested) considered for suspension and/or investigation.

Suspensions—Fiscal Year 1987					
	Rail	Motor	Water	Total	Per- cent
Suspended.....	1	13	0	14	25.0
*Not suspended or investigated.....	4	22	3	29	51.8
*Not suspended but investigated.....	0	1	0	1	1.8
**Otherwise disposed of.....	9	2	1	12	21.4
	14	38	4	56	100.0

* Permitted to become effective.

** Proposed provisions canceled or rejected; protests withdrawn or filed too late.

TABLE 8.—informal rate cases branch (Bureau of Traffic—fiscal year 1987)

Rate cases general:	
On hand beginning of year.....	148
Received during year.....	5967
Disposed of during year.....	5975
Pending at end of year.....	140
Informal complaints and statements of claimed damages:	
On hand beginning of year.....	8
Received during year.....	9
Disposed of during year.....	16
Pending at end of year.....	1
Special docket cases	
On hand beginning of year.....	30
Received during year.....	474
Disposed of during year.....	480
Pending at end of year.....	24

TABLE 9.—ICC Unit Of The National Defense Executive Reserve (NDER)

NDER Group	Fiscal Year 1985	Fiscal Year 1986	Fiscal Year 1987
	On Roll	On Roll	On Roll
Rail	483	390	388
Motor.....	104	99	99
Water.....	33	28	28

TABLE 10.—Car Supply—Cars Installed, Retired, and Ordered, Class I railroads

	Fiscal year			
	1972	1977	1982	1987
Cars Installed:				
Box	15,099	5,623	233	50
Refrigerator	2,837	809	150	0
Gondola	5,809	4,757	1,179	123
Hopper	12,007	9,885	3,848	0
Covered Hopper	5,847	6,803	1,216	20
Flat	1,330	2,797	464	606
Other	50	518	59	0
Total Cars.....	42,979	31,192	7,149	799
Cars Retired:				
Box	23,387	31,240	33,038	18,393
Refrigerator	8,947	2,488	3,280	4,855
Gondola	9,588	10,720	7,211	9,297
Hopper	23,280	22,151	14,145	17,421
Covered Hopper	1,621	2,855	5,136	5,050
Flat	- 18,584*	2,997	4,468	2,160
Other	4,295	1,422	2,621	1,511
Total Cars.....	52,534	73,873	69,679	58,687
Cars Ordered:				
Box	11,011	7,588	140	50
Refrigerator	3,543	713	150	0
Gondola	4,551	2,873	691	0
Hopper	7,414	7,224	2,900	0
Covered Hopper	9,177	5,419	699	20
Flat	2,724	3,874	358	606
Other	4,803	500	00	0
Total Cars.....	43,223	28,191	4,038	676

* Negative retirement. Indicates increase in ownership in excess of new installations resulting from reclassification or transfer of equipment, purchase or lease of used equipment, etc.

TABLE 11.—Ownership, Serviceable Ownership, and Turnaround Time, Class I Railroads.

	Fiscal Year			
	1972	1977	1982	1987
Ownership:				
Plain Box	345,718	262,369	135,424	74,867
Equipped Box	176,473	167,461	151,965	92,788
Total Box	522,191	429,830	287,389	167,655
Refrigerator	92,597	73,531	56,443	41,939
Gondola	181,758	166,886	137,079	97,052
Hopper	379,125	335,349	297,629	206,319
Covered Hopper	139,109	161,238	169,263	145,846
Flat	95,358	98,256	87,743	84,203
Other	44,920	33,558	23,460	15,615
Total Cars	1,455,058	1,298,648	1,059,006	758,629
Serviceable Cars:				
Plain Box	314,360	228,937	118,484	65,118
Equipped Box	166,440	149,167	130,944	76,840
Total Box	480,800	378,104	249,428	141,958
Refrigerator	86,508	68,346	50,399	37,058
Gondola	169,868	150,969	126,529	87,690
Hopper	362,324	314,047	283,141	189,436
Covered Hopper	133,718	151,357	157,558	134,759
Flat	90,522	91,617	82,097	80,117
Other	43,129	31,833	82,097	14,802
Total Cars	1,368,869	1,186,273	971,310	685,820
Calendar Year				
	1971	1976	1981	1986
Turnaround Time—Days:				
Box	24.01	28.59	37.7	35.8
Refrigerator	35.48	35.58	41.1	47.9
Gondola	20.76	21.68	20.5	17.9
Hopper	15.31	14.42	14.4	13.2
Covered Hopper	21.98	23.37	31.0	30.3
Flat	13.78	15.15	17.4	10.8
Average All Cars	20.14	21.63	24.1	20.9

TABLE 12.—Extension of Time Limits—Rail Proceedings, Fiscal Year 1987

Proceeding	Type of Proceeding	Notification of Extension	Reason and Duration
No. 40037, Cheney Lime & Cement Co. v. Seaboard System Railroad, Inc.	Complaint	December 12, 1986	60-day extension to consider complex legal issues.
No. 40074, United Transportation Union v. Burlington Northern Railroad Company and Houston Belt & Terminal Railway Company	Complaint	March 13, 1987	45-day extension to consider complex legal issues.

APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. The Commission additionally issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. For convenience, the GPO stock number has been included. Price information may be obtained by contacting:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402
Telephone (202) 783-3238

Publications without an asterisk may be obtained free of charge by writing to the ICC office listed after the title.

- Bureau of Accounts (AC)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Compliance and Consumer Assistance (OCCA)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Government and Public Affairs (OGPA)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of the Secretary
Publications Room (Rm. B-221)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Transportation Analysis (OTA)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Public Assistance (OPA)
Interstate Commerce Commission
Washington, D.C. 20423

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Bureau of Accounts' Public Reference Room, Room 3378, from 8:30 a.m. to 5:00 p.m. weekdays. Photo-

copies of these reports, at a cost of 60 cents per page, with a \$3.00 minimum charge per order, may be obtained by writing to the Office of the Secretary, Room 2215, ICC, Washington, D.C. 20423.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to one year from the date of service from Dynamic Concepts, Inc. (TSI), Room 2229, ICC, Washington, D.C. 20423, or by calling (202) 289-4357 or 289-4359. Printed reports in the "ICC" and "MCC" series are also available from the Commission's Publications Room while supplies last. Printed reports in the "ICC 2nd Series" only are available through TSI.

CONSUMER PUBLICATIONS

OCP-100 Household Goods Information—OCCA

This booklet explains consumer rights when moving household goods across state lines.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress

- 94th 1980 (026-000-01195-7)*
- 95th 1981 (026-000-01225-2)*
- 96th: 1982 Out of print
- 97th 1983 (026-000-01238-4)*
- 98th 1984 (026-000-01247-3)*
- 99th 1985 (026-000-01250-3)*
- 100th 1986 (026-000-01256-2)*
- 101st 1987 (026-000-0 -)*

Code of Federal Regulations, Title 49, Revised to October 1986

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures. (022-003-94228-9)*

Parts 1200-End: Uniform system of accounts, preservation of records, reports, valuation, handling of national security information and classified material, passenger and freight tariffs and schedules, credit regulations and general.

Interstate Commerce Act

Available from the Government Printing Office in U.S. Code, 49 U.S.C. Sec. 10101 et seq.*

ICC Register

A daily summary of motor carrier applications and of decisions and notices issued by the ICC. Subscription information is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Telephone (202) 783-3238.

INFORMATIONAL PUBLICATIONS

Department of Transportation and State Regulations—Bulletin No. 9—OPA

Fees for Various and Related Services of the Interstate Commerce Commission—OPA (November 1985)

Government Traffic—Bulletin No. 3—OPA

Guide to Applying for Permanent Operating Authority: Passengers—OPA (October 1984)

Guide to Applying for Permanent Operating Authority: Property—OPA (September 1987)

Guide to Applying for Temporary or Emergency Temporary Operating Authority—OPA (August 1986)

Guide to Filing Protests, Replies and Appeals—Bulletin No. 6—OPA

Highlights of the Bus Regulatory Reform Act of 1982—Bulletin No. 2—OPA

Highlights of the Motor Carrier Act of 1980—Bulletin No. 1—OPA

Public Participation in Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982—OPA

Public Participation in Rail Abandonment Cases Under the Interstate Commerce Act—OPA

Illegal Lumping—OPA

Addresses illegal "lumper" practices

Lease-Purchase Plans—OPA

Loss and Damage Claims! Can you Collect?—OCCA

Owner Operator Food Transportation—Bulletin No. 4—OPA

Sample Caption Summaries—Bulletin No. 7—OPA

Self-Help Against Unauthorized Operations—OCCA

So You Want to Start a Small Railroad—ICC Small Railroad Application Procedures—OPA (August 1987)

Speeches and Statements—OGPA

ICC Commissioners' speeches or statements before Congressional committees may be obtained on an individual basis from the Office of Government and Public Affairs, Room 4111, ICC, Washington, D.C. 20423. Telephone (202) 275-7252.

State Regulatory Commissions and Fuel Tax Divisions—Bulletin No. 10—OPA

SPECIALIZED PUBLICATIONS

Motor

Customer Pickup of Food and Grocery Products Under Section 8 of the Motor Carrier Act of 1980—OTA

Minority and Female Motor Carrier Profile—OPA (October 1986)

Minority and Female Motor Carrier Listings—OPA (October 1987)

Staff Report No. 11—Highlights of Activity in the Property Motor Carrier Industry—OTA

Selected Statistics of Class II Motor Carriers of Property—SE (Calendar 1985)

Transport Statistics in the U.S.: Motor Carriers—SE

(First Release, Part 2, 1985)
(Second Release, Part 2, 1985)

Rail

Class I Line-Haul Railroads, Selected Earnings Data—SE (Quarterly)

Guidelines for Evaluating the Feasibility of Short Line Operations—OTA (August 1982)

Railroad TOFC/COFC Monitoring Study—OTA (December 1985)

Report of Railroad Employment Class I Line-Haul Railroads—SE

Statement No. M-350 (Monthly)

Transport Statistics in the U.S.: Railroads (First Release, 1986)—SE

Wage Statistics of Class I Railroads in the U.S.—SE

Statement No. A-300 (Calendar 1986)

URCS—Uniform Railroad Costing System, 1980 Railroads Cost Study—AC

Technical documentation and explanation of the Uniform Railroad Costing System (December 1982)

URCS—Uniform Railroad Costing System, 1980 Rail Carload Cost Scales—AC

Documentation and regional data for manual calculations under the Uniform Railroad Costing System (April 1983)

URCS—Uniform Railroad Costing System, Phase III, Movement Costing Program User's Manual—AC

Description of the independent interactive computer program for estimating cost of specific, individual rail movements (April 1983)

URCS—Uniform Railroad Costing System, Phase III, Movement Costing Program Technical Manual—AC

Description of Fortran costing programs compatible to Data General Corporation (DEC) and IBM equipment (April 1983)

General

The Commission's Bureau of Accounts publishes quarterly reports on selected earnings data—AC

- *Large Class I Motor Carriers of Property;*
- *Large Class I Motor Carriers of Passengers; and*
- *Large Class I Household Carriers*

APPENDIX D

Appropriations and Employment

The following statement shows average full-time employment and total appropriations for the fiscal years 1952 to 1987 for activities included under the current appropriation title "Salaries and Expenses."

Year	Appropriation	Average Employment	Year	Appropriation	Average Employment
1953.....	11,003,500	1,849	1971.....	28,442,000	1,731
1954.....	11,284,000	1,838	1972.....	30,840,000	1,676
1955.....	11,679,655	1,859	1973.....	33,720,000	1,765
1956.....	12,896,000	1,902	1974.....	40,681,000	1,874
1957.....	14,879,696	2,090	1975.....	44,970,000	1,986
1958.....	17,412,375	2,238	1976.....	52,455,000	2,034
1959.....	18,747,800	2,268	TQ.....	12,290,000	2,113
1960.....	19,850,000	2,344	1977.....	60,786,000	2,084
1961.....	21,451,500	2,386	1978.....	65,575,000	2,040
1962.....	22,075,000	2,400	1979.....	70,400,000	2,040
1963.....	23,502,800	2,413	1980.....	79,063,000	1,946
1964.....	24,670,000	2,408	1981.....	82,400,000	1,852
1965.....	26,715,000	2,339	1982.....	70,150,000	1,540
1966.....	27,540,000	2,376	1983.....	65,600,000	1,319
1967.....	27,169,000	1,929	1984.....	60,000,000	1,158
1968.....	23,846,000	1,899	1985.....	51,100,000	915
1969.....	24,664,000	1,808	1986.....	48,408,000	806
1970.....	27,742,660	1,802	1987.....	46,802,000	732

Status of Appropriations

Status of fiscal year 1987 appropriations as of September 30, 1987:

Salaries and expenses:	
Total appropriations.....	\$46,802,000
Unobligated balance transferred from Directed Rail Service.....	\$52,920
Net total.....	46,854,920
Reimbursements.....	125,000
Total obligations.....	42,959,709
Unobligated balance lapsing	4,020,211
Directed Rail Service:	
Unobligated balance available from prior appropriation	52,920
Unobligated balance transferred to Salaries and expenses.....	52,920
Total obligations:	
Payments to carriers	—0—
Recoveries of prior years' obligations.....	—0—
Unobligated balance available (end of year).....	—0—

Receipts

Status of receipt accounts as of September 30, 1987

Registration and filing fees	\$4,323,562
Fines, penalties and forfeitures	851,999
Service charges for allotments of pay for savings account.....	—0—
Charges for administrative services.....	31,612
Recoveries from railroad loan guarantees	11,638,529
Miscellaneous recoveries and refunds.....	1,009
Withholding for military benefits	—0—
Total Receipts	\$16,846,711

APPENDIX E

Carrier Financial and Statistical Data

TABLE 1.—Carriers regulated by the Commission

	Number
Carriers subject to Uniform System of Accounts and required to file annual and periodic reports as of December 31, 1987	
Railroads, Class ¹	19
Motor carriers, Class I passenger ²	44
Motor carriers, Class I property ³	856
Motor carriers, Class II property ⁴	1,266
Total	2,185
Carriers filing annual reports but not subject to prescribed Uniform System of Accounts as of December 31, 1987:	
Holding companies (rail)	3
Carriers and organizations not subject to filing annual reports as of December 31, 1987:	
Railroads, Class II ⁵	20
Railroads, Class III ⁶	294
Railroads, switching and terminal companies.....	119
Railroad lessor companies.....	95
Stockyard companies.....	5
Carlines (companies which furnish cars for use on lines of railroads).....	163
Holding companies (motor).....	66
Motor carriers of passengers, other than class I.....	3,523
Classes I and II motor carriers of property relieved from reporting requirements of classes I or II, etc.	711
Class III motor carriers of property.....	35,505
Water carriers.....	315
Maritime carriers	6
Freight forwarders.....	394
Rate bureaus and organizations	57
Coal slurry pipeline company.....	1
Protective service companies.....	6
Total	41,280
Grand Total	43,468

¹ Railroad companies having adjusted annual operating revenues of \$50,000,000 or more for three consecutive years. Revenues are adjusted annually to eliminate the effects of inflation from the classification process. Each railroad's gross annual operating revenue total is multiplied by a deflator factor based on Railroad Freight Index. For 1985, 1986, and 1987, the deflator factors are .5686, .5647, and .5686, respectively.

² Motor carriers having annual operating revenues in excess of \$5,000,000.

³ Motor carriers having adjusted annual operating revenues in excess of \$5,000,000 for three consecutive years. Revenues are adjusted annually to eliminate the effects of inflation from the classification process. Each motor carrier's gross annual operating revenues total is multiplied by a deflator factor based on the Producers Price Index for all commodities. For 1985, 1986, and 1987, the deflator factors were .8647, .8659, and .8647, respectively.

⁴ Motor carriers having adjusted annual operating revenues less than \$5,000,000 but in excess of \$1,000,000 for three consecutive years. Revenues are adjusted annually to eliminate the effects of inflation from the classification process. Each motor carrier's gross annual operating revenues total is multiplied by a deflator factor based on the Producers Price Index for all commodities. For 1985, 1986, and 1987, the deflator factors were .8647, .8659, and .8647, respectively.

⁵ Railroad companies having adjusted annual operating revenues less than \$50,000,000 but in excess of \$10,000,000 for three consecutive years. Revenues are adjusted annually to eliminate the effects of inflation from the classification

process. Each railroad's gross annual operating revenue total is multiplied by a deflator factor based on Railroad Freight Index. For 1985, 1986, and 1987, the deflator factors are .5686, .5647, and .5686, respectively.

⁶ Railroad companies having adjusted annual operating revenues less than \$10,000,000 for three consecutive years. Revenues are adjusted annually to eliminate the effects of inflation from the classification process. Each railroad's gross annual operating revenues total is multiplied by a deflator factor based on Railroads Freight Index. For 1985, 1986, and 1987, the deflator factors are .5686, .5647, and .5686, respectively.

TABLE 2.—Recapitulation of preliminary 1986 operating revenues, net investment and taxes (dollars in thousands)

Carrier Type	Number of Carriers Represented ¹	Operating Revenues	Net Investments	Income Taxes on Ordinary Income ²
Railroads—Class I line haul.....	18	\$26,204,122	\$35,657,291	\$115,884
Motor carriers of property—				
Class I intercity	677	35,558,635	9,100,117	806,121
Motor carriers of passengers—				
Class I intercity	29	1,117,320	541,515	13,928
Total	724	62,880,077	45,298,923	935,933
Percentage distribution				
Railroads—Class I line haul.....	2.5	41.7	78.7	12.4
Motor carriers of property—				
Class I intercity	93.5	56.5	20.1	86.1
Motor carriers of passengers—				
Class I intercity	4.0	1.8	1.2	1.5
Total	100.0	100.0	100.0	100.0

¹ Carriers for which preliminary financial and statistical data were available.

² Federal income taxes and provisions for deferred taxes only for railroads; all other carriers include Federal and state income taxes, and provisions for taxes.

TABLE 3.—Class I line-haul railroads shareholders' equity, long-term debt and dividends (dollars in thousands)

Item	1984 ¹	1985 ¹	1986
1. Shareholders' equity			
a. Capital stock	\$ 4,190,569	\$ 3,865,225	\$ 3,483,360
b. Capital surplus	6,587,916	6,495,854	6,258,979
c. Retained income	17,687,446	17,244,132	15,699,282
d. Total equity	28,465,931	27,605,211	25,441,621
2. Long-term debt	11,199,037	10,483,619	10,183,266
3. Total equity and debt	39,664,968	38,088,830	35,624,887
4. Ratio of debt to total equity and debt (percent)	28.23	27.52	28.58
5. Amount of dividends ²			
a. Cash	\$ 1,123,747	\$ 1,433,071	\$ 1,376,532

¹ Restated.

² Includes duplications on account of intercorporate payment.

TABLE 4.—Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1984 ¹	1985 ¹	1986
1. Number of carriers represented	31	24	18
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight	\$26,313,925	\$26,687,652	\$25,343,911
b. Passenger	101,189	103,205	107,717
c. Total operating revenues	29,288,992	27,586,441	26,204,122
3. Total operating expenses	25,692,228	25,225,295	24,896,015
4. Railway tax accruals	2,613,327	2,722,588	2,938,765
5. Net railway operating income	2,515,005	1,746,386	506,990
6. Ordinary income	2,795,305	1,788,151	746,965
7. Extraordinary items—Net ²	-455	93,371	-202,558
8. Net income	2,794,850	1,881,522	544,407
NET INVESTMENT AND EQUITY			
9. Net investment in transportation property and equipment plus working capital ³	34,610,216	36,050,119	35,657,291
10. Shareholders' equity	28,465,931	27,605,211	25,441,621
FINANCIAL RATIOS (PERCENT)			
11. Operating ratio (L.3 + L.2c)	87.72	91.44	95.01
12. Return on net investment (L.5 + L.9)	7.27	4.84	1.42
13. Return on equity:			
a. Ordinary income basis (L.6 + L.10)	9.82	6.48	2.94
b. Net income basis (L.8 + L.10)	9.82	6.82	2.14
EMPLOYEE DATA			
14. Average number	323,030	301,879	275,817
15. Compensation:			
a. Total	\$11,003,829	\$10,563,033	\$9,918,673
b. Per hour paid for	13.846	14.299	14.779

¹ Restated.² Includes income taxes on extraordinary items and discontinued operations and accounting changes.³ Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the Commission in Ex Parte No. 393 (Sub. No. 1), *Standards for Railroad Revenue Adequacy*, served December 31, 1986.

NOTE: Net railway operating income, ordinary income and net income for the years 1985 and 1986 were substantially reduced due to large accounting adjustments by some railroads to record severance pay for employee buyouts and the write-down of assets attributable to freight car retirements and line abandonments.

TABLE 5.—Class I line-haul railroads' current assets and current liabilities as of December 31, 1985 and 1986 (dollars in thousands)

Item	1985 Amount	Percent of change	1986 Amount	Percent of change
Total current assets.....	\$9,350,269	- 4.8	\$9,132,495	- 2.3
Cash and temporary cash				
investments.....	2,651,442	- 17.8	2,660,145	+ .3
Materials and supplies.....	1,144,612	- 13.6	927,718	- 18.9
Total current liabilities.....	8,266,745	+ 3.8	8,389,756	+ 1.5
Net working capital:				
Including materials and supplies....	1,083,524	- 41.7	742,739	- 31.5
Excluding materials and supplies...	- 61,088	—	- 184,979	—
Ratios:				
Current assets to current liabilities:				
Including materials and supplies....	1.13		1.09	
Excluding materials and supplies...	.99		.96	
Cash and temporary cash				
investments to current liabilities32		.32	

TABLE 6.—Class I intercity motor carriers of property condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1984	1985	1986 ¹
1. Number of carriers represented	832	738	677
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight-intercity-common carrier	\$30,480,633	\$29,018,909	\$29,455,167
b. Freight-intercity-contract carrier	2,083,648	2,518,194	2,585,191
c. Freight-local cartage	332,738	272,406	256,181
d. Intercity transportation for other motor carriers	188,160	183,292	190,322
e. Other operating revenue	2,735,049	2,909,532	3,071,774
f. Total operating revenues	35,820,228	34,902,333	35,558,635
3. Operating expenses	34,099,863	33,231,347	33,509,723
4. Lease of distinct operating unit—net	1,778	453	986
5. Net carrier operating income	1,722,143	1,671,439	2,049,878
6. Other income and miscellaneous deductions from income—net	- 183,510	- 168,436	- 206,986
7. Income taxes on ordinary income ²	636,787	678,692	808,121
8. Ordinary income	901,848	824,311	1,036,771
9. Extraordinary items—net ³	65,298	51,418	25,027
10. Net income	967,144	875,729	1,061,798
NET INVESTMENT AND EQUITY			
11. Net investment in carrier operating property and equipment plus working capital	8,208,028	8,607,571	9,100,117
12. Shareholders' and proprietors' equity	6,451,402	6,578,483	6,971,394
FINANCIAL RATIOS (PERCENT)			
13. Operating ratio (L.3 + L.2f)	95.20	95.21	94.24
14. Return on net investment (L.5 + L. 11)	20.99	19.42	22.53
15. Return on equity (L. 10 + L. 12)	14.99	13.31	15.23
EMPLOYEE DATA			
16. Average number	498,356	484,539	495,962
17. Compensation	\$13,159,685	\$12,871,562	\$13,289,124

¹ Preliminary.

² Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include income taxes on extraordinary items. Includes provision for deferred taxes.

³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

TABLE 7.—Class I intercity motor carriers of passengers condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1984	1985	1986 ¹
1. Number of carriers represented	43	43	29 ²
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Passenger intercity schedules	\$ 861,359	\$ 836,122	\$ 764,504
b. Local and suburban schedules	3,302	5,144	3,703
c. Charter or special service	176,763	178,836	152,816
d. Other operating revenue	213,436	212,975	196,297
e. Total operating revenues	1,254,860	1,233,077	1,117,320
3. Operating expenses	1,254,250	1,167,631	1,082,074
4. Lease of carrier property—net	74	- 131	- 243
5. Net carrier operating income	684	65,315	35,003
6. Other income and miscellaneous deductions—net	52,170	107	15,400
7. Income tax on ordinary income ³	9,947	12,604	13,928
8. Ordinary income	42,907	52,818	36,475
9. Extraordinary items—net ⁴	4,358	- 198	- 181
10. Net income	47,265	52,620	36,294
NET INVESTMENT AND EQUITY			
11. Net investment in carrier operating property and equipment plus working capital	596,729	566,779	541,515
12. Shareholders' and proprietors' equity	631,856	544,417	483,993
FINANCIAL RATIOS (PERCENT)			
13. Operating ratio (L.3 + L.2e)	99.95	94.69	96.85
14. Return on net investment (L.5 + L.11)	0.11	11.52	6.46
15. Return on equity (L.10 + L.12)	7.48	9.67	7.50
EMPLOYEE DATA			
16. Average number	24,674	23,588	19,798
17. Compensation	\$551,067	\$517,952	\$443,337

¹ Preliminary.

² The large decline in the number of Class I bus companies between 1985 and 1986 is attributable primarily to a merger, effective January 1, 1986, of the wholly owned motor carrier of passengers subsidiaries of Trailways Lines, Inc. into Trailways Lines, Inc., pursuant to Commission approval in No. MC-F-16480, *Trailways Lines, Inc.—Merger—Trailways Bus System, Inc., et al.*, served November 19, 1985.

³ Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include income taxes on extraordinary items. Includes provision for deferred taxes.

⁴ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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